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ABSTRACT

As the public segments of postsecondary education begin a second decade of efforts to achieve equal educational opportunity in California, plans are announced in this report to expand opportunities for ethnic minorities, women, and low-income students. The commission stresses the need for intersegmental cooperation in working toward this goal. Separate sections of this report are devoted to: student body composition, comparison base; trends in access, distribution, and persistence of minorities and women; barriers to equal educational opportunity; student affirmative action programs; and the Bakke decision and equal educational opportunity (LBH)

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Commission Report 77-4
June 1977

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
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EQUAL EDUCATIONAL OPPORTUNITY IN CALIFORNIA

POSTSECONDARY EDUCATION: PART II

HE 009 208

CALIFORNIA POSTSECONDARY EDUCATION COMMISSION

Resolution 12-77

Approving Resolution
Equal Educational Opportunity in
California Postsecondary Education: Part II

WHEREAS, Assembly Concurrent Resolution 151 (Resolution Chapter 209, 1974) requested the Regents of the University of California, the Trustees of the California State University and Colleges, and the Governors of the California Community Colleges

> to prepare a plan that will provide for addressing and overcoming, by 1980, ethnic, economic, and sexual underrepresentation in the make-up of the student bodies of institutions of public higher education as compared to the general ethnic, economic, and sexual composition of recent California high school graduates, and

WHEREAS, The California Postsecondary Education Commission was requested to report annually to the Legislature on the progress the public segments have made in addressing and responding to the problem, and

WHEREAS, There is no evidence to indicate that, despite considerable efforts by the segments, progress has been made in the past four years in increasing the proportion of ethnic minority enrollment in public postsecondary education; now, therefore, be it

RESOLVED, That each of the three public segments prepare by August 1, 1977, a comprehensive student affirmative action plan, and that the California Postsecondary Education Commission coordinate implementation of these plans, with the cooperation of and complementary action by the segments, to increase educational opportunities for the traditionally underrepresented groups, and be it further

RESOLVED, That the Commission approves Equal Educational Opportunity in California Postsecondary Education: Part II, as its second response to Assembly Concurrent Resolution 151, and that the Commission authorize its Director to transmit the report to the Legislature, the Governor, the Board of Regents of the University of California, the Board of Trustees of the California State University and Colleges, and the Board of Governors of the California Community Colleges.

Adopted
June 13, 1977

TABLE OF CONTENTS

Preface

I. Background and Summary 1

II. Student Body Composition 7

III. Comparison Base 15

Current Status of the Comparison Base 16

Underrepresentation in 1980 19

IV. Trends in Access, Distribution, and Persistence of Minorities and Women 25

Access 25

Distribution 31

Persistence 38

V. Barriers to Equal Educational Opportunity 41

Barrier 1: Inadequate High School Preparation 41

Barrier 2: Shortage of Qualified Bilingual/ Cross-Cultural Public School Personnel . . 46

Barrier 3: Family Income and College Costs 49

Barrier 4: Curriculum Planning and Student Personnel Services 53

Barrier 5: Faculty and Staff Attitudes 55

Barrier 6: Social and Cultural Constraints 57

Barrier 7: Admissions Tests 58

VI. Student Affirmative Action Programs 63

Equal Educational Opportunity Programs 67

The California Community Colleges 70

The California State University and Colleges 72

The University of California 74

Problems to be Resolved 75

VII. The Bakke Decision and Equal Educational Opportunity 81

The Position of the University Concerning Bakke 81

The Decision of the California Supreme Court 82

The Position of Minority Interest Groups Concerning Bakke After the California Decision 83

University Response to the Minority-Interest Groups . . 87

Special Admissions Alternatives Suggested by the Court 89

Disadvantaged Criteria for Special Admissions Programs 90

VIII. Planning for Equal Educational Opportunity 93

IX. Conclusions and Recommendations 97

APPENDICES

A. Student Body Composition

B. Comparison Base

C. Trends in Access, Distribution, and Persistence

D. Barriers to Equal Educational Opportunity

E. The Bakke Decision

F. Planning for Equal Educational Opportunity

PREFACE

As the public segments of postsecondary education embark upon a second decade of efforts to make equal educational opportunity a reality in California, the Commission will work with the segments in seeking to implement an effective plan to expand educational opportunities for ethnic minorities, women and low-income students. In doing so, the Commission will stress the need for intersegmental cooperation in working toward this goal.

Bruce D. Hamlett and Juan C. Yniguez of the Commission staff are to be commended for their work in preparing Part II of this report.

Donald R. McNeil
Director

I. BACKGROUND AND SUMMARY

Assembly Concurrent Resolution 151 (Resolution Chapter 209, 1974) requested the Regents of the University of California, the Trustees of the California State University and Colleges, and the Governors of the California Community Colleges:

> To prepare a plan that will provide for addressing and overcoming, by 1980, ethnic, economic, and sexual underrepresentation in the make-up of the student bodies of institutions of public higher education as compared to the general ethnic, economic, and sexual composition of recent California high school graduates.

These segmental plans were to be submitted to the Postsecondary Education Commission by July 1, 1975, and the Commission, in turn, was to "integrate and transmit the plans to the Legislature with its comments." In addition, ACR 151 requested the public segments to report annually to the Commission on their progress toward the 1980 goal, with specific discussion of obstacles to the implementation of a statewide plan.

The initial Commission report on this subject, Equal Educational Opportunity in California Postsecondary Education: Part I, presented three conclusions:

- The student affirmative action plans prepared by the segments did not provide an adequate basis on which to develop a coherent statewide plan to address and overcome the problem of underrepresentation, as requested by the Legislature in ACR 151.[1]

- Black and Spanish-surnamed students were and are underrepresented in public postsecondary education, and, during 1973 and 1974, the degree of underrepresentation apparently increased, rather than decreased.

- Increased financial assistance should be provided for: (1) recruitment programs to increase the admissions-eligibility pool of the underrepresented groups, and (2) expanded student-support services to promote successful educational experiences for those gaining access to public postsecondary institutions.

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1. Copies of the segmental plans are included in Appendix C-E of Equal Educational Opportunity in California Postsecondary Education: Part I, California Postsecondary Education Commission, April 1976.

This second Commission report on equal educational opportunity assesses the progress the segments have made since April 1976, both in developing and implementing a student affirmative action plan and in addressing and overcoming the ethnic, economic, and sexual underrepresentation in their student bodies.[2] Before reviewing the conclusions of this report, the following observations should be noted:

- The primary focus of the discussion of ethnic minorities is on Chicano/Latino and Black students. The first Commission report on equal educational opportunity concluded that, based on currently available data, Chicano/Latino and Black students are the two ethnic minorities underrepresented in California public postsecondary education. There is no evidence available from the segments now, twelve months later, which contradicts that conclusion.

  It has been argued, however, by the California Indian Education Association, Inc., (CIEA), that the apparently adequate level of representation of American Indian students is attributable to errors in data collection, rather than a true representation of enrollment trends. Preliminary discussion with the CIEA raises questions concerning the accuracy of segmental data. In preparing the third report in this series, the Commission intends to give specific consideration to this question.

- Despite the segmental data indicating adequate representation of American Indians and Asian Americans, each of these ethnic groups is faced with distinct educational problems and needs. In preparing the third report of this series, the Commission will also give detailed consideration to the problems and needs of these two groups.

- The discussion of equal educational opportunity focuses primarily on the public segments of California postsecondary education. Only limited data are available on the ethnic composition of students attending the approximately 1,800 independent and private institutions in California.

- Student ethnicity data were obtained through voluntary student self-designation, and may exhibit statistically significant abnormalities due to high non-response rates. Consequently, this data should be used with great caution.

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2. The method used to determine the degree of underrepresentation is discussed in Chapter 3, "Comparison Base." Briefly, the enrollment level of ethnic minorities and women in postsecondary institutions is compared to their 1973 twelfth-grade enrollment in California public schools. Underrepresenation of an ethnic minority group means that a smaller percent is enrolled in postsecondary education than was enrolled in the twelfth-grade in 1973.

- Only limited data are available concerning the income levels of students attending public institutions. Consequently, while ACR 151 called for an analysis of the ethnic, economic, and sexual composition of the student bodies, this report gives detailed consideration only to the ethnic and sexual composition.

- The term "Chicano/Latino" will be used when referring to those people(s) traditionally referred to as "Spanish-surnamed" or "Hispanic." The use of the term "Chicano/Latino" is predicated on the fact that approximately 95 percent of all "Spanish-surnamed" persons in California are of Mexican descent.[3] The only exceptions to the use of the term "Chicano/Latino" will occur when referring to national data and/or data provided by independent sources.

Within the limitations required by the above factors, the report offers the following conclusions:

- Despite considerable effort by the segments, there is no evidence to indicate that progress has been made in the past four years to increase the proportion of ethnic-minority enrollment in public postsecondary education. Chicano/Latino and Black students are still underrepresented, and since 1973 the degree of underrepresentation has apparently increased, both in the California Community Colleges and the University of California. Women are also underrepresented, particularly in the graduate program of the University of California.

- One of the goals of ACR 151 was for the public segments to expand their enrollment of Black and Chicano/Latino students in order to adequately address and overcome, by 1980, ethnic underrepresentation in their student bodies. This goal will not be achieved. There are fewer Blacks now enrolled in the University of California than in 1973. Similarly, there are fewer Chicano/Latino students enrolled in the California Community Colleges in 1976 than four years ago. In contrast, each year California high-school graduates include a larger percent of Black and Chicano/Latino students.[4]

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3. "Mexican American Population in California: October 1970, with Projections to 1980." An Official Census Report by the Mexican-American Population Commission of California, April 1971.

4. In 1980, the twelfth-grade class in California public high schools will potentially include 10 percent Black students and 17 percent Chicano/Latino students. Given the high secondary-school dropout rate for these students, unfortunately many will not graduate from high school.

- The lack of progress during the past four years in expanding the enrollment of ethnic minorities does not necessarily indicate a lack of commitment to the goal of equal educational opportunity by the public institutions. Several factors beyond the control of the institutions have limited their success. These factors include problems of unemployment and inflation, the extension of federally funded aid programs to students attending accredited private vocational/technical institutions, the high secondary-school dropout rate for Chicano/Latino and Black students, the inadequate number of trained bilingual teachers, and the inadequate elementary- and secondary-school training received by many ethnic minorities from low-income communities.

- There is a need for a cooperative approach by the three public segments, and the independent institutions, as well, to make further progress in the development and implementation of plans for equal educational opportunity. Accordingly, Commission staff has worked with staff from the public segments to prepare a model outline for them to use in preparing reports pursuant to ACR 151. These reports, to be submitted to the Commission by August 1, 1977, will provide the basis for a consolidated, statewide student affirmative action plan. The Commission's plan will provide for cooperative and complementary action by the segments to increase educational opportunities for traditionally underrepresented groups. The segments are expected to include budgets and cost estimates for all current and proposed programs, enabling the Legislature to make an informed decision concerning the commitment of resources necessary to implement the statewide plan.

- Chicano/Latino and Black students have had less opportunity than white students to participate in and benefit from public post-secondary education. Similarly, women students have had less opportunity to participate in and benefit from public graduate and professional education. Efforts to eliminate these inequalities must focus on several barriers to change, including inadequate elementary- and secondary-school education; low family income and the cost of a college education; frequently insensitive, and sometimes hostile, faculty and staff attitudes; social and cultural constraints; standardized admissions tests; and ineffective student personnel services.

- The future status of special-admissions criteria used to increase minority access to both public and independent institutions is uncertain at this time. In its decision in the Bakke case, the California Supreme Court struck down the policy of the University of California's Davis Medical School, which relied upon race or ethnicity for its special-admissions programs.[5] The Court held

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5. Bakke v. Board of Regents of the University of California, Supreme Court of California, No. S.F. 23311, September 16, 1976.

that admissions criteria for public schools which relied solely on race or ethnicity and which resulted in the exclusion of nonminority students were unconstitutional. The United States Supreme Court has agreed to hear the University's appeal of this decision.

Given these conclusions, it is clear that a need exists for the public institutions to assess thoroughly their equal educational opportunity programs and to prepare a comprehensive plan for student affirmative action. This assessment should include a study of the obstacles within each institution to the implementation of effective programs. The planning should include the development of specific program goals, a timetable for their achievement, and the assignment of responsibility to specific individuals. The Commission and the public segments must continue to work to integrate these plans into a cooperative statewide effort to achieve equal educational opportunity.

In carrying out the study, staff has received the advice and criticism of several individuals:

Dr. Robert Bess, Dean of Academic Affairs, California State University and Colleges

Ms. Kati Haycock, Coordinator of Student Affirmative Action, University of California

Dr. Lilliam Morales, Dean of Student Affairs, California Community Colleges

Dr. Vicente (Bert) Rivas, Associate Dean of Student Affairs, California State University and Colleges

Mr. William Chavez, Special Assistant to Assemblyman Peter R. Chacon

Mr. Jose Hermocillo, Legislative Aide, Senate Industrial Relations Committee

Mr. Richard Navarro, Senate Legislative Fellow

Mr. Peter Roos, Director of Education Litigation, Mexican American Legal Defense and Educational Fund

Mr. Anthony Salamanca, Principal Consultant, California Legislature Special Subcommittee on Bilingual-Bicultural Education

Mr. Eugene Salazar, Assistant Dean of Students, University of California, San Francisco Medical Center

Mr. Charles Metzger, Consultant, Policy Analysis and Special Projects, Department of Education

Mr. Marc Irish, Associate Governmental Program Analyst, California Community Colleges

Mr. Alan Nishio, Director, Educational Opportunity Program, California State University, Long Beach

Mr. Juan Lara, Associate Director, Undergraduate Admissions, University of California, Los Angeles

Ms. Sandra Smith, Student Personnel Assistant, Sacramento City College.

None of these persons is responsible for the findings and recommendations contained in this report.

II. STUDENT BODY COMPOSITION

A meaningful analysis of the status and needs of ethnic minorities and women in postsecondary education is handicapped by the limited availability and quality of data. The major problems in this area are the following:

1. The primary source of data on ethnicity and sex is student self-identification. The two weaknesses inherent in this method are that many students will not volunteer such information[1] and that there is no practical way of verifying the accuracy of student responses.

2. Ethnic classifications and definitions have been changed by the federal government from year to year.[2] As a consequence, each segment has made at least one change in its categories for ethnic group data in the past four years, and the data reported for Fall 1975 were not presented in a common format for the three public segments.[3]

3. The information necessary for a thorough trend-analysis of the access, distribution, and persistence of ethnic minorities and women in postsecondary education has not been available. The data of particular importance include: (1) full- and part-time enrollments by discipline and grade level, and (2) associate, baccalaureate, master's, doctoral, and professional degrees conferred by subject field.[4]

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1. For example, the "no response" rate for State University students was 23.5 percent in 1975 and 21.6 percent in 1976. As a result of the high nonresponse rates, some of the student ethnicity data may exhibit statistically significant abnormalities.

2. For example, 1974 ethnic-enrollment data for the State University included the classification "Mexican American." In 1975, classifications were included for both "Mexican American" and "Latin American." Similarly, the classification "Native American" in 1974 was changed to "American Indian" in 1975.

3. It should also be noted that some Community College campuses did not submit data concerning numbers of students by sex and ethnic minority classification for inclusion in the systemwide report in Fall 1975.

4. Information is now available for degrees conferred, by program category, in 1975-76 for the four-year institutions.

As a consequence of the limited availability and quality of current data, there are inherent limitations in any assessment of the status of minorities and women in public higher education. While conclusions can be offered concerning the four-year period, Fall 1973-Fall 1976, they can only be general, reflecting the limitations of the data. Any analysis concerning developments prior to 1973 becomes more tenuous, as the data are less reliable.

The most important conclusion concerning student enrollments at public institutions during the period 1973-76 is that, despite increased financial support by the State Legislature and expanded effort by the schools, there is no evidence of significant change in the ethnic and sexual composition at these institutions. For example:

1. Ethnic minority enrollment, as a percent of total student enrollment, apparently has decreased in the California Community Colleges and the University of California.[5] The California State University and Colleges is the only public segment in the past four years that has increased its percent of ethnic minorities enrolled.

2. The number of Black students, as a percent of total student enrollment, apparently has decreased in the California Community Colleges and the University of California, while remaining essentially constant in the California State University and Colleges.[6]

3. The number of Chicano/Latino students, as a percent of total student enrollment, apparently has decreased in the California Community Colleges, remained essentially constant in the University of California, and increased in the California State University and Colleges.[7]

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5. The University has experienced a slight decrease (in the percent of students identifying themselves as ethnic minorities), from 20.3 percent (1973) to 19.9 percent (1975), while the Community Colleges have decreased from 24.5 percent (1973) to 20.8 percent (1975).

6. The University has experienced a decrease (in the percent of students identifying themselves as Black), from 5.0 percent (1973) to 4.0 percent (1976), while the Community Colleges have decreased from 8.4 percent (1973) to 7.6 percent (1975). The State University has changed from 6.2 percent (1973) to 6.5 percent (1976).

7. The Community Colleges have experienced a decrease (in the percent of students identifying themselves as Spanish surnamed) from 9.4 percent (1973) to 7.9 percent (1975), while the State University has increased from 6.2 percent (1973) to 7.0 percent (1976). The University has changed from 5.1 percent (1973) to 5.0 percent (1976).

Table I

MINORITY ENROLLMENTS IN THE PUBLIC SEGMENTS OF CALIFORNIA POSTSECONDARY EDUCATION 1973-1976: Voluntary Self-Identification

	Fall 1973	Fall 1974	Fall 1975	Fall 1976
Black Students as a Percent of Total Enrollment*				
CCC	8.4%	8.4%	7.6%	--
CSUC Undergraduates	6.5	6.3	6.7	6.9%
Graduates	4.7	4.8	4.9	5.0
Total	6.2	6.0	6.3	6.5
UC Undergraduates	4.9	4.5	4.1	4.0
Graduates	5.5	5.0	4.7	3.9
Total	5.0	4.6	4.2	4.0
Spanish Surname Students as a Percent of Total Enrollment*				
CCC	9.4%	8.9%	7.9%	--
CSUC Undergraduates	6.9	6.8	7.3	7.5%
Graduates	4.4	4.7	5.1	5.4
Total	6.2	6.4	6.9	7.0
UC Undergraduates	5.0	5.0	5.1	5.2
Graduates	5.2	5.5	5.6	4.6
Total	5.1	5.1	5.2	5.0
Total Minority Enrollment as a Percent of Total Enrollment***				
CCC	24.5%	21.0%	20.8%	--
CSUC Undergraduates	20.7	20.5	22.6	--
Graduates	15.8	15.6	18.3	--
Total	19.6	19.3	21.7	--
UC Undergraduates	20.1	20.2	19.9	--
Graduates	20.9	20.8	20.2	--
Total	20.3	20.4	19.9	--

*Total enrollment (domestic and foreign students), excluding nonresponse.

**Students in the "total minority enrollment" include those who identified themselves as "American Indian," "Black," "Mexican American," "Latin American," "Oriental," "Filipino" and "other ethnic groups."

4. There are fewer Black students currently enrolled in the University of California than in 1973. Black enrollment in the past four years has decreased in the undergraduate and graduate programs by 11.1 percent and 16.9 percent, respectively.[8]

5. There were fewer Chicano/Latino students enrolled in the California Community Colleges in 1975 than in 1973. The enrollment of Chicano/Latino students has decreased by 3.3 percent during the past three years.[9]

6. There has been a slight increase in the number of women students, as a percent of the total student body, in all three segments.[10]

Available data indicate that, despite considerable effort by the segments and increased financial support by the State Legislature, little progress has been made in the past four years to increase the percent of ethnic minority enrollment in public postsecondary education. While a detailed discussion of the causes for this lack of progress is provided in Chapters 4 and 5, two general questions must be raised:

1. Are the current student affirmative action programs of the three public segments responding to the needs of the current and prospective students from low-income, ethnic-minority communities? In preparing their plans pursuant to ACR 151, each segment should undertake a thorough evaluation of its programs.

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8. In Fall 1973, University students who identified themselves as Black included 3,772 undergraduate students and 1,486 graduate students. In Fall 1976, University students who identified themselves as Black included 3,355 undergraduate students and 1,235 graduate students.

9. In Fall 1973, Community College students who identified themselves as Spanish-surnamed included approximately 32,100 full-time students and approximately 83,200 students. In Fall 1975, this enrollment included 31,870 full- and part-time students and 80,431 full- and part-time students. Community College enrollment data for Fall 1976 will not be available until approximately June 1977.

10. Female enrollment in the Community Colleges has increased from 44.4 percent (1972) to 45.8 percent (1975) and in the State University from 42.3 percent (1972) to 47.5 percent (1976). Female enrollment in the University undergraduate program increased from 44.7 percent (1972) to 46.6 percent (1976), while in the graduate program it increased from 26.6 percent (1972) to 32.4 percent (1976).

Table II

SEX COMPOSITION OF ENROLLMENTS IN THE PUBLIC SEGMENTS OF CALIFORNIA POSTSECONDARY EDUCATION 1973-1976

	Fall 1972	Fall 1973	Fall 1974	Fall 1975	Fall 1976
Male Students as a Percentage of Total Enrollments					
CCC	55.6%	55.0%	53.5%	54.2%	--
CSUC Undergraduates	58.7	57.3	55.8	55.3	53.7%
Graduates	54.3	52.7	51.5	50.6	48.3
Total	57.7	56.2	54.8	54.3	52.5
UC Undergraduates	55.3	54.8	54.4	54.2	53.4
Graduates	73.4	72.1	70.3	68.8	67.6
Total	60.6	59.7	58.9	58.3	57.5
Female Students as a Percentage of Total Enrollment					
CCC	44.4%	45.0%	46.5%	45.8%	--
CSUC Undergraduates	41.3	42.7	44.2	44.7	46.3%
Graduates	45.7	47.3	48.5	49.4	51.7
Total	42.3	43.8	45.2	45.7	47.5
UC Undergraduates	44.7	45.2	45.6	45.8	46.6
Graduates	26.6	27.9	29.7	31.2	32.4
Total	39.4	40.3	41.1	41.7	42.5

Source: Postsecondary Education in California: Information Digest 1977, California Postsecondary Education Commission, 1977, pp. 16-18.

2. Has the increased financial support from the State Legislature resulted in increased enrollment by ethnic minorities? Evidence is not yet available to answer this question, since the increase in State aid would only begin to have impact on Fall 1976 enrollments. Preliminary data from the University of California indicate an increase in new undergraduate enrollment by ethnic minorities in Fall 1976, perhaps in response to the increased financial assistance.[11]

Information concerning the sex and ethnic composition of graduates of public institutions provides basically the same conclusions as that concerning the composition of segmental student bodies:

1. White males are the primary recipients of degrees awarded by the professional schools of the University of California. In 1975-76, white males (when compared with all other students) received 60 percent or more of the degrees conferred in dentistry, medicine, and veterinary medicine. In law and pharmacy, white males received almost 50 percent of the degrees conferred.[12]

2. Black and Chicano/Latino students received only a small percent of the doctoral degrees conferred by the University of California.[13]

3. During the past five years, women have received an increasingly larger percent of the professional degrees awarded by the University of California. In 1971-72, women received 11.8 percent of the degrees awarded; in 1975-76, this total increased to 26.8 percent. Women have made their largest increase in law and their smallest increase in dentistry.[14]

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11. See Appendix A for further information concerning the ethnic composition of new undergraduates at the University of California in Fall 1976.

12. Excluding those not identifying their ethnic background, white males received approximately 50 percent of the professional degrees awarded by the University in 1975-76. The University awarded 1,681 professional degrees, 1,183 (70.4%) to white students, 803 (48%) to white male students, and 380 (22.6%) to white female students.

13. Blacks received only 1.9 percent (39) of the doctorates conferred, while Chicano/Latino graduates received only 0.8 percent (16). The University conferred 2,068 doctorates in 1975-76, with white graduates receiving 60.3 percent (1,245) and nonresident aliens receiving 17.1 percent (354). Ethnic data were not available for 14.9 percent of the degree recipients.

14. See Appendix C.

4. Men receive the majority of doctoral degrees awarded by the University of California. During the past five years, however, women have received an increasingly larger percent of the doctorates awarded. In 1971-72, women received 15.8 percent of the doctorates; in 1975-76, this total increased to 21.5 percent.[15]

5. Approximately 50 percent of the graduate degrees awarded by the California State University and Colleges to women are in the field of education. This heavy concentration of women in education has remained constant during the past five years.[16]

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15. In 1971-72, the University conferred 2,070 doctorates, 1,743 to men and 327 to women. In 1975-76, the University conferred 2,068 doctorates, 1,623 to men and 445 to women.

16. During the past five years, the State University has awarded 19,065 master's degrees to women, with 8,839 (46.4%) in education. During the past five years, the State University has awarded 25,666 master's degrees to men, with 7,286 (28.4%) in education. In 1975-76, 27 percent of the master's degrees awarded to men were in education.

III. COMPARISON BASE

It is necessary to develop a method of comparison in order to assess the progress of the public institutions in responding to the underrepresentation of ethnic minorities and women in postsecondary education. The Legislature, through ACR 151, recommended using "the general ethnic, economic, and sexual composition of recent California high school graduates." The Commission, in its initial report concerning equal educational opportunity, concluded that "because each segment has a different educational mission, it appears that no single comparison base is suitable for all three segments."[1] Therefore, the Commission recommended the development of a comparison method which reflects "an understanding of the size of the student pool of those eligible for admission in each segment."

The purpose of a comparison base is to provide an indicator of progress toward the goal of equal educational opportunity. It should not be regarded as a "quota," prescribing a final number or percent of students of a specific ethnic background to be enrolled in each campus or segment.

Given this purpose, Commission staff, in cooperation with the public segments, has developed a multiple comparison base to provide varying methods of assessment. This multiple comparison will help in identifying the problem of underrepresentation in each segment and thereby assist in the development of potential solutions. The following methods of comparison are to be utilized:

MULTIPLE COMPARISON BASE[2]	
California Community Colleges:	The twelfth-grade population statewide The twelfth-grade population in each district The adult population in each district
University of California: California State University and Colleges:	The twelfth-grade population statewide The adult population statewide The high school graduate eligible for admission statewide The Community College student body statewide (compared with Community College transfers enrolled in the segment.

1. Equal Educational Opportunity in California Postsecondary Education: Part I, p. 7.

2. Adult population is defined as the population over the age of 17.

1. The California Community Colleges will compare the composition of the student body in each district with the composition of the twelfth-grade population and the adult population within that same district. This comparison base will reflect the unique population composition of each district and its particular geographical location.

2. In order to provide a single method of comparison common to the three public segments, the composition of the Community College student body statewide also will be compared to the twelfth-grade population statewide.

3. The public four-year segments will compare the statewide composition of their student bodies with the composition of the twelfth-grade population statewide, the adult population statewide, and the eligible high school graduates statewide. These three methods of comparison will provide information concerning segmental progress toward providing increased access, both for those eligible to attend the institution, and for the high-school-graduate population as a whole.

4. The public four-year segments will compare the composition of their Community College transfer student bodies with the composition of the Community College student body statewide. Since the four-year institutions are highly dependent upon Community College transfers as a means of increasing minority and female enrollments, this comparison base will indicate segmental progress in utilizing this method of recruitment.[3]

Current Status of the Comparison Base

Presently, the only recommended comparison base for which sufficient data are available is the 1973 twelfth-grade population statewide. During the next two years, staff from the Commission, the public segments, and the State Department of Education will work cooperatively to develop data so that these multiple comparison methods can be utilized.

In its initial report, the Commission presented four generalizations concerning segment progress toward the goal of equal educational opportunity.

Using the comparison base described above, available data indicate these same generalizations are accurate one year later.

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3. In Fall 1973, for example, 50 percent of all new undergraduates in the California State University and Colleges were Community College transfers.

Chart 1

Chicano/Latino Students in Postsecondary Education:
Approximate Degree of Representation

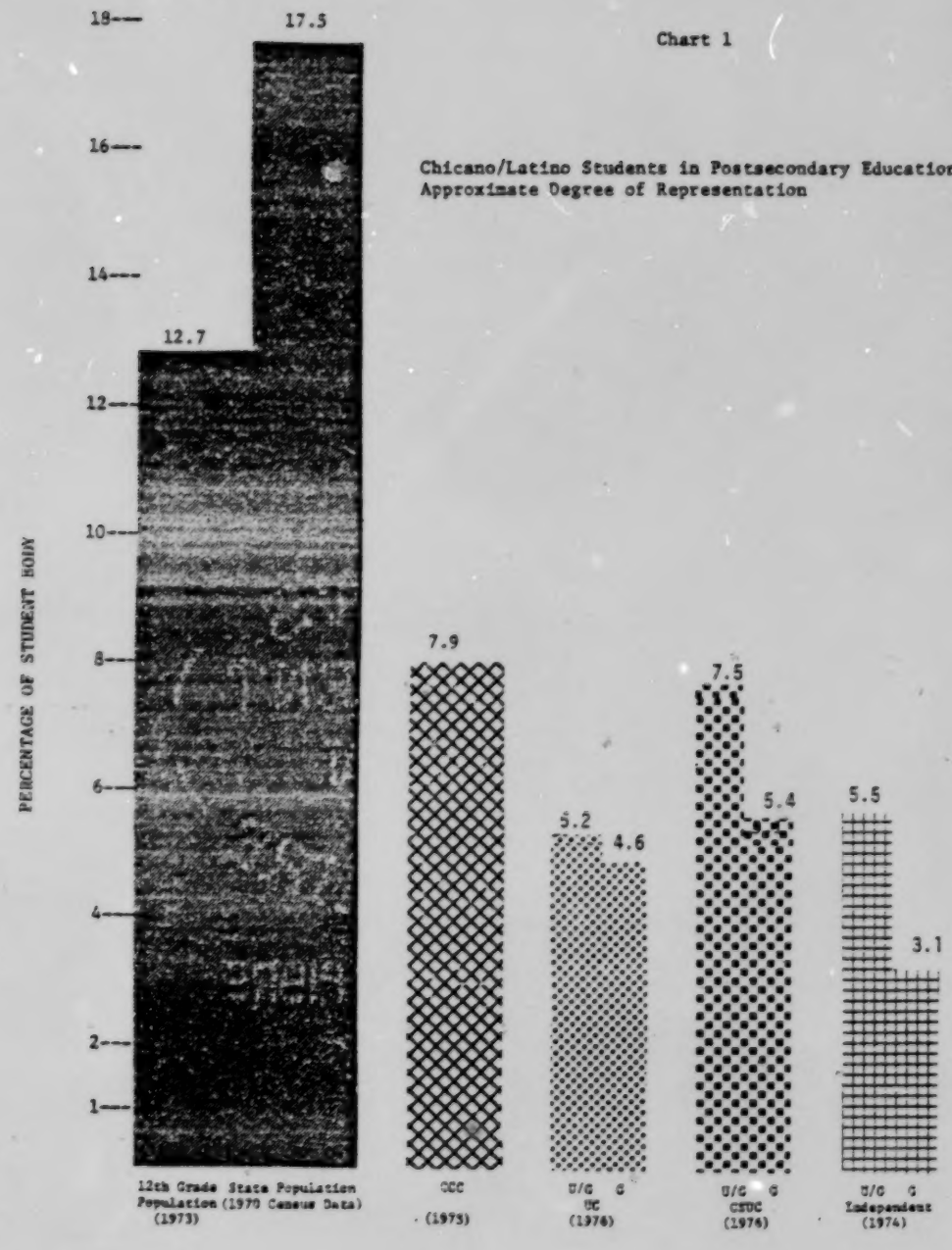
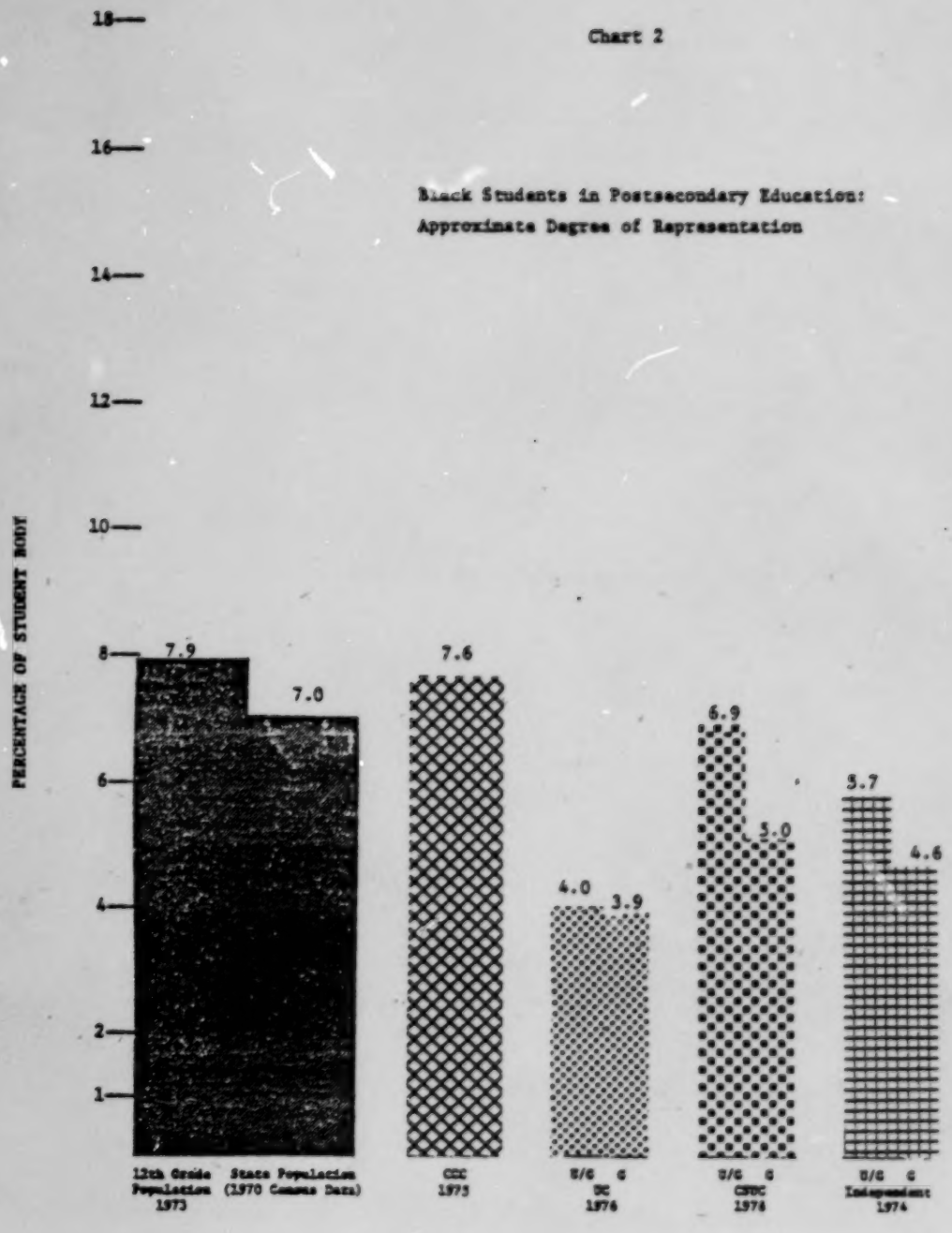


Chart 2

Black Students in Postsecondary Education:
Approximate Degree of Representation



1. Chicano/Latino students are significantly underrepresented in all three public segments.[4] The representation of Chicano/Latino women students is particularly low.

2. Black students are underrepresented in both the California State University and Colleges and the University of California.[5]

3. The degree of underrepresentation of Black and Chicano/Latino students in the three public segments apparently has increased in the past four years. The only exception to this is the California State University and Colleges, which has apparently increased its percentage enrollment of Chicano/Latino and Black students.[6]

4. Women students are underrepresented in all three public segments. The representation of women graduate students in the University of California is particularly low. (See Table II, page 11.) While women are a majority of the graduate student body in the California State University and Colleges, a large percent of these women are enrolled in the field of education. In most other fields of graduate study at the State University, women are underrepresented.

Underrepresentation in 1980

The public segments will not achieve the goal of equal educational opportunity by 1980 set by the Legislature in ACR 151. Moreover, given current enrollment trends, it is likely that the degree of underrepresentation of Chicano/Latino and Black students will be greater in 1980 than in 1976. The ethnic minority population in California is growing rapidly. By 1980, the potential high school graduating class may include 10 percent Black students and 17 percent Chicano/Latino students. If the current high school dropout rate continues, however, 35 percent of these Black and Chicano/Latino students will leave school before completing the twelfth-grade. As long as that dropout rate continues, Black and Chicano/Latino students will remain underrepresented in postsecondary institutions.

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4. See Chart 1.

5. See Chart 2.

6. The enrollment of Black students in the State University increased from 6.2 percent (1973) to 6.5 percent (1976), while the enrollment of Chicano/Latino students increased from 6.2 percent (1973) to 7.0 percent (1976). In numbers of students, Black enrollments in the State University increased from 11,069 in 1973 to 12,850 in 1976. Chicano/Latino enrollments increased from 11,626 in 1973 to 13,924 in 1976.

The problem of underrepresentation of ethnic minorities is in part, the product of a more general societal problem--that which relegates the majority of Chicano/Latino and Black children to low-income communities and inferior education in elementary and secondary school.[7] The Department of Education has the major responsibility for responding to the problem of unequal educational opportunity in elementary and secondary schools.[8] The State Legislature is confronted with the need to respond to the Serrano v. Priest decision and thereby provide more equitable funding for public schools in low-income communities.

The message must remain clear--the problem of underrepresentation of Chicano/Latino and Black students in public higher education is becoming more serious every year as these minority groups grow in size. In order to increase minority enrollments in postsecondary education ten years in the future, attention must be directed now to elementary school children in low-income districts. The postsecondary institutions have the responsibility to work with the Department of Education and the State Legislature in responding to this problem.

In contrast to the underrepresentation of ethnic-minority and low-income students, the public segments do have the capability to achieve equal representation for women by 1980. During the past three years the participation rate for women has increased, and the segments should strive to maintain that trend. Particular emphasis must be given to increasing opportunities for women in graduate work in disciplines other than education, the social sciences, and the humanities.

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7. The California Supreme Court ruled in Serrano v. Priest that the public school financing system in California is unconstitutional because the poor school districts cannot provide the same quality of educational opportunity to its students as do the wealthier districts.

8. See: Report of the California Commission for Reform of Intermediate and Secondary Education (RISE), presented to Wilson Riles, California Superintendent of Public Instruction, 1975.

Chart 3

Black Students

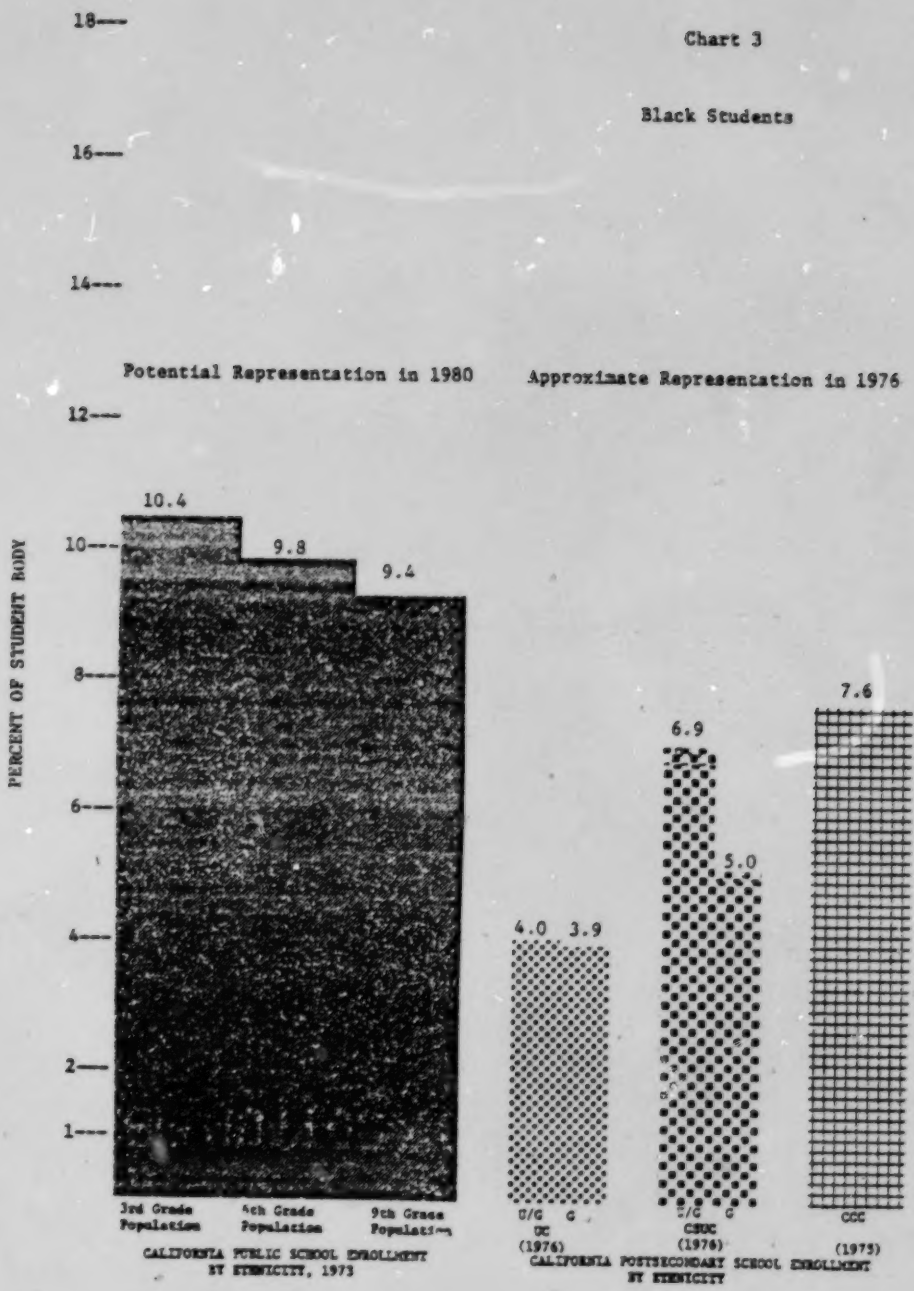


Chart 4

Chicano/Latino Students

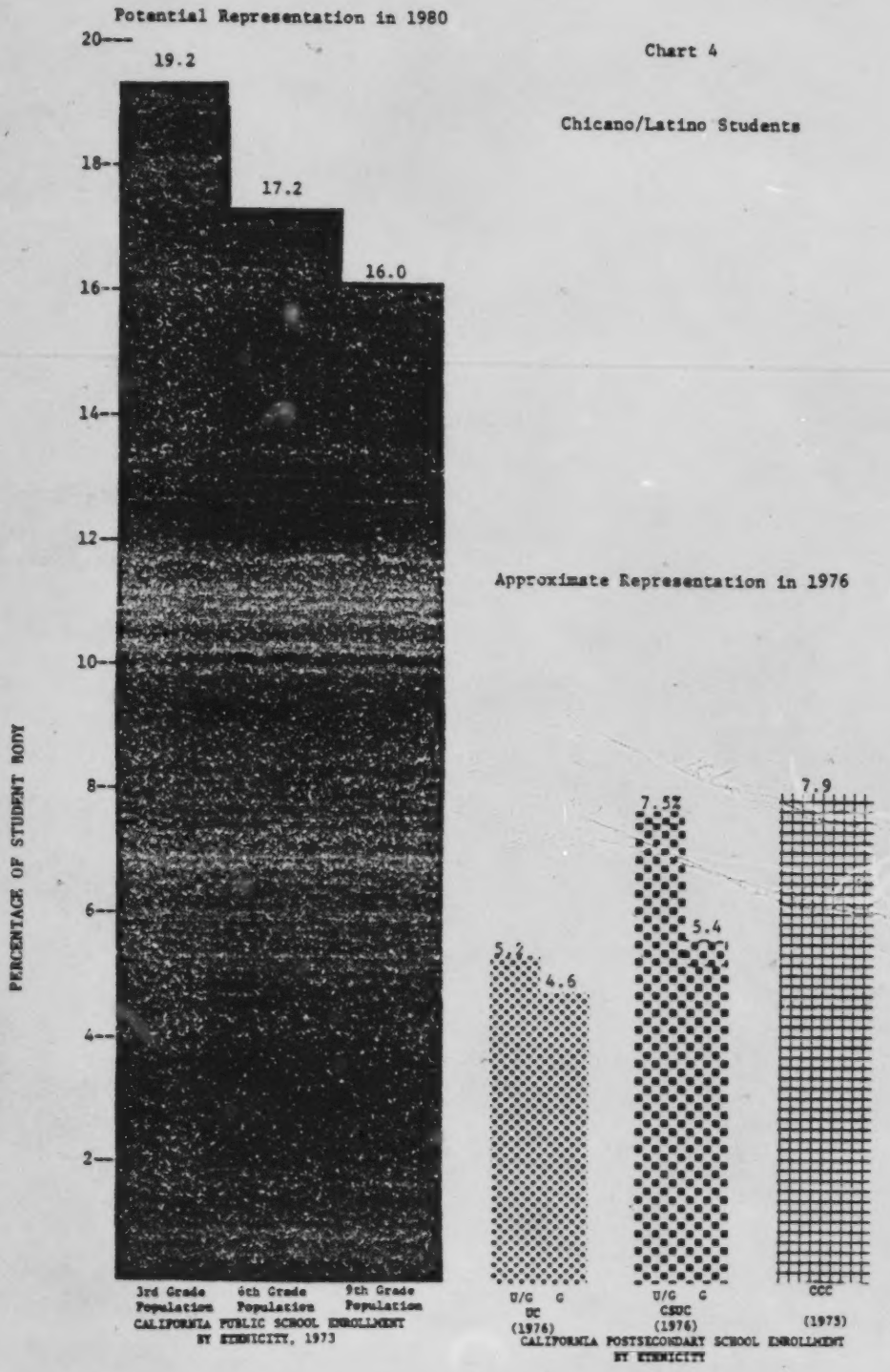
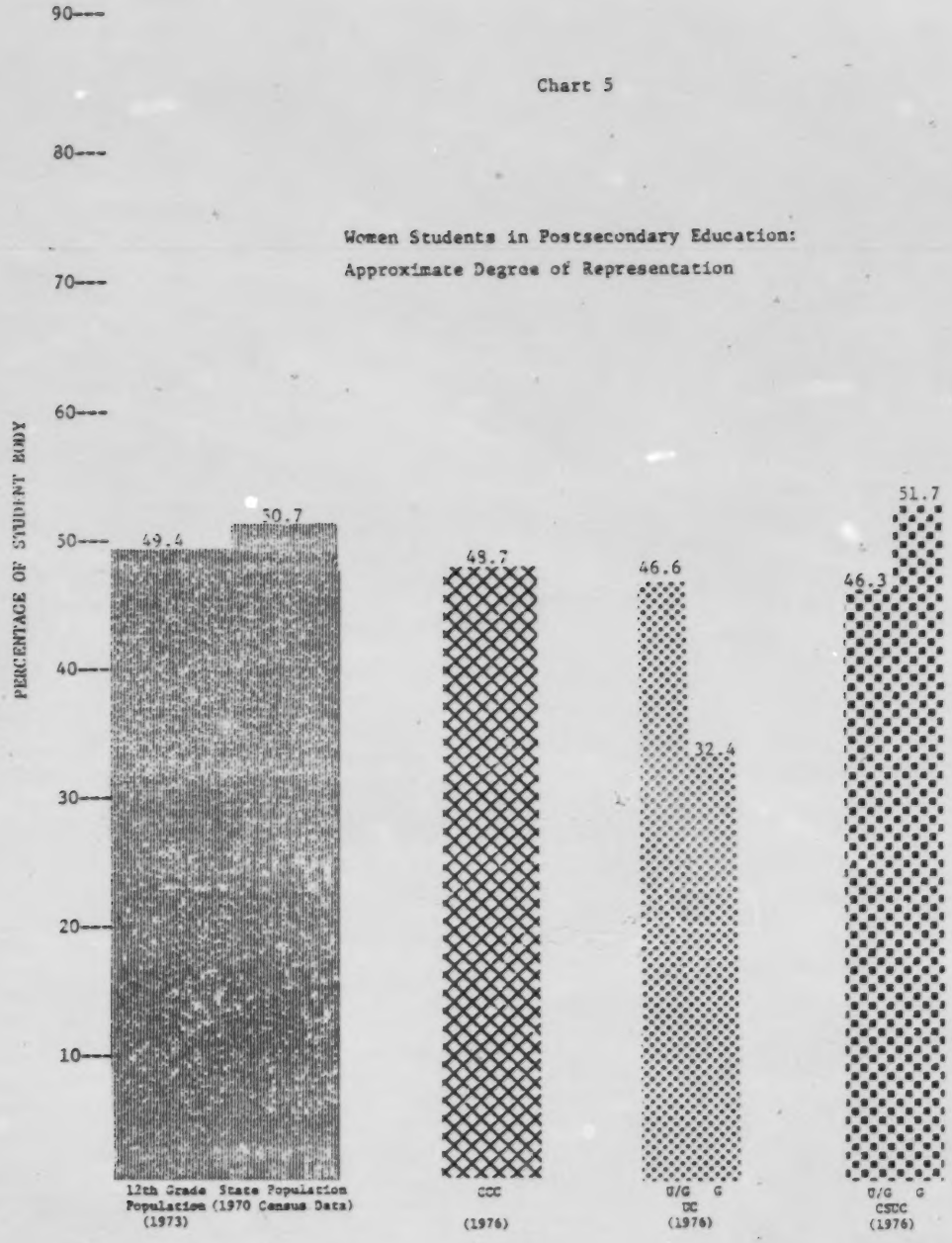


Chart 5

Women Students in Postsecondary Education:
Approximate Degree of Representation



IV. TRENDS IN ACCESS, DISTRIBUTION, AND PERSISTENCE OF MINORITIES AND WOMEN

Three important indicators of equal educational opportunity are:

1. Access--the extent to which members of traditionally underrepresented groups enroll in postsecondary education;

2. Distribution--the extent to which members of traditionally underrepresented groups are disbursed among institutions and programs of study; and

3. Persistence--the extent to which members of traditionally underrepresented groups complete a college program in a timely fashion and/or meet personal educational objectives.

While considerable progress has been made over the past decade in increasing the numbers of ethnic minorities and women gaining access to higher education, a thorough assessment is needed of California's progress in all three areas of equal educational opportunity.

The purposes of this chapter are to assess what the available data show concerning apparent levels of access, distribution and persistence, and to offer tentative conclusions based upon that assessment. The following chapter will address the institutional and noninstitutional barriers responsible for the current levels of access, distribution and persistence.

Access

Compared to their own educational aspirations, and to the aspirations of white students, Chicano/Latino and Black students have not achieved full access.[1]

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1. A national survey revealed that Black and Spanish-surnamed high school seniors aspire to attend some form of college at a roughly similar or higher rate than do white high school seniors. Of those students surveyed, 29 percent of the white high school students indicated a desire to attend "some college." Of the Black students surveyed, 28 percent responded in the same manner, as did 40 percent of the Spanish-surnamed students. Dale Tillery, Distribution and Differentiation of Youth: A Study of Transition from School to College, Center for Research and Development in Higher Education, Berkeley: Ballinger Publishing Company, 1973. Table 7-8.

White high school students are more likely than students in either ethnic minority group to graduate from high school, to enroll in college, to receive a baccalaureate degree, and to enter graduate and professional schools.[2]

In the past ten years, minority enrollments apparently have gone through two phases. During the period 1968 to 1972, there was a constant yearly increase in the enrollment of minorities in each of the segments.[3] This increase can be attributed partially to the establishment of EOP/EOPS programs in the California Community Colleges and the California State University and Colleges, and to the University of California's continued support of its own EOP, established in 1964.[4]

As noted in Chapter II, during the second period--from 1973 to the present--minority enrollment, as a percent of total enrollment, has stabilized and begun to decrease in some areas.

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2. For example, in its 1974 Doctorate Records File, the National Research Council, National Academy of Sciences, indicated that ethnic minorities received only 931 of the 20,641 doctorates awarded to native-born United States citizens.

3. Based upon information provided by the Office of Budgetary Planning, undergraduate minority enrollments at the University of California increased from 10 percent (1968) to 18.9 percent (1972), and in the graduate program from 6.0 percent (1968) to 19.1 percent (1972). Source: "Fall 1974 Ethnic Data," Office of Budgetary Planning. Minority enrollment included "Blacks," "Asians," "Indians," "Mexican/Spanish Americans," and "foreign students."

   Information provided by the California State University and Colleges, while less extensive, reveals that minority enrollments in 1968 totaled 9.9 percent. This figure can be contrasted with a 19.6 percent minority enrollment in 1973. Source: Report to the California Postsecondary Education Commission regarding "Representation of Various Ethnic and Economic Groups and Women in Higher Education," June 30, 1975. Minority enrollment included "Blacks," "Mexican Americans," "Asian Americans," and "Native Americans."

4. The history of EOP/EOPS programs is discussed in more detail in Chapter VI, "Student Affirmative Action Programs."

In the development of equal educational opportunity programs, 1973-74 was an important year. Contrary to previous years, the enrollment of Chicano/Latino and Black students apparently reached a general plateau from which there has been no appreciable increase. Available evidence indicates the following factors have contributed to this development:

1. The 1973-74 academic year was the first year in which students could receive federal financial assistance to attend accredited trade and proprietary schools. Among ethnic minorities, there is a greater tendency to enroll in trade and technical schools, while white students have a greater tendency to enroll in traditional colleges and universities.[5]

   Therefore, public postsecondary institutions have experienced competition for minority students from the private vocational/technical schools.

2. Ethnic minorities have been affected more adversely than their white counterparts by the negative implications of current economic difficulties--inflation/unemployment. The unemployment rate for non-white Californians has been considerably higher than that for white citizens. In 1973, for example, non-whites in the California labor force had an unemployment rate of over 10 percent, compared to less than 6 percent for whites. Nationally, the unemployment rate in 1973 for Black youths aged 16 to 19 years was 31.4 percent, compared to 12.6 percent for white youths.[6]

3. The frequency and intensity of the violent and non-violent civil rights activities of the sixties diminished drastically in the 1970s. The initial outburst of civil rights activities

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5. A recent study of 20 Los Angeles high schools reported that, among graduates from low-income secondary schools (with an overall 92 percent Black and Spanish-surnamed enrollment), 7 percent were enrolled in occupational programs and 37 percent were attending public postsecondary institutions. In contrast, among graduates from high-income secondary schools (with an overall 94 percent white enrollment) only 1 percent were enrolled in an occupational program and 66 percent were attending public postsecondary institutions.

   Unequal Access to College: Postsecondary Opportunities and Choices of High School Graduates, a staff report, Assembly Permanent Subcommittee on Postsecondary Education, November 1975, Table 15. Additional evidence for this statement is included in Appendix C. See also Scientific Manpower Commission, Manpower Comments, Vol. 12, No. 3, p. 17.

6. U.S. Census, Social and Economic Status of the Black Population in the United States, 1974. Series P-23, No. 54, Washington, D.C., 1975.

led to the construction of EOP/EOPS programs, and subsequently to a marked increase of disadvantaged minorities attending public postsecondary institutions. Nationally, the curtailment of civil rights activities has led to a shifting of political attention, causing a decrease in both the political pressures and the financial allocations necessary for effective affirmative action programs.[7] In California, during 1973 and 1974, there was slight reduction in State funds allocated for EOP/EOPS programs.[8]

During the past two years, Governor Brown has demonstrated a strong commitment to equal educational opportunity by budgeting significant increases in State funds for EOP/EOPS programs in the Community Colleges and the State University and Colleges. While there is little evidence thus far of increased minority enrollment, it is expected that the additional funding will result in greater persistence of ethnic minorities in postsecondary education.[9]

4. Although the programs constructed in the 1960s were initially successful in raising the percent of minorities attending public postsecondary institutions, they often suffered from such shortcomings as a lack of adequate funding, well-trained and/or credentialed staff, as well as faculty and/or administrative resistance. However, owing to the extremely low enrollment levels of minorities at that time, the inadequate efforts in support of EOP/EOPS, while somewhat debilitating, were not as

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7. For further discussion of a national perspective on EOP/EOPS activities, see Educational Opportunity Programs: National Views of State Issues, a staff paper, Assembly Permanent Subcommittee on Postsecondary Education, California Legislature, January 1977.

8. The EOP grant dollars expended at the State University in 1973-74 totaled $3,198,918; and in 1974-75, $3,061,455. The EOPS dollars at the Community Colleges in both 1973-74 and 1974-75 totaled $6,170,500, although 1,166 fewer students were served in the latter year.

9. In 1976-77, the EOP dollars available at the State University totaled $6,129,041. At the Community Colleges in 1976-77 EOPS dollars totaled $11,484,027. There has not been a similar significant increase in State funding for the University EOP program.

critical as today. Many of the same external and internal problems of the past still plague EOP/EOPS.[10]

5. There has been increased competition for minority high school students among the public segments, as well as the independent colleges and universities. Given the present lack of data concerning the minority eligibility pool and the lack of data reflecting whether the public and independent segments are recruiting and/or contacting the same potential students, the actual degree of intrasegmental and intersegmental competition cannot be precisely determined. However, it is safe to assume that the primary area of competition is between the public four-year institutions and the independent liberal arts colleges that offer similar courses of study. To the extent that recruiting efforts continue their traditional focus, an increase in enrollment of qualified minorities in one segment may cause a decrease in the others.

In addition to these specific factors, there are two constant factors which operate as limiting forces. The number of eligible Chicano/Latino and Black students is limited because of a high secondary-school dropout rate. While high school completion rates vary with place of residence (i.e., urban, rural, or suburban), white high school students are more likely to graduate than are Black or Chicano/Latino students.[11] In the inner-city area, for example, Blacks have a high school dropout rate twice as large as whites. Data from the 1970 census indicate that by age 17, 35 percent of Spanish-surnamed youths have already dropped out of high school.[12]

A second constant, limiting factor is that a smaller percent of Black and Chicano/Latino graduates than white graduates qualify for admission to four-year institutions. Because of different career goals, degree aspirations, academic preparation, and financial needs, a higher percent of Black and Chicano/Latino students are either forced, or "self-select" themselves, into careers outside the scope of higher education.

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10. For a detailed discussion of this issue, see Access and Assistance: The Study of EOP/EOPS in California's Public Institutions of Higher Education, Evaluation and Training Institute, September 1976.

11. Supporting evidence for this statement is provided in Appendix D.

12. In contrast, white youths who had reached the age of 17 dropped out of high school at approximately half the rate of Spanish-surnamed youths. Chicanos in Higher Education: Status and Issues; Monograph No. 7, Chicano Studies Center Publications, University of California, Los Angeles, Table 4.

Enrollment levels in the past ten years have had a completely different history for women than those described above for ethnic minorities. During the period 1968-1972, when enrollment percentages for minorities increased, the enrollment percentage for women decreased. During the period 1973 to present, when enrollment percentages for minorities either stabilized or began to decrease, those for women increased. This latter trend attests to changing perceptions of women about their roles in society as well as society's changing perceptions of the roles women are to fulfill in the future. As a result of the introspection generated by the feminist movement, women are enrolling in postsecondary institutions, in part to learn more about themselves and their society. However, similar to men, the more pragmatic concern of finding a challenging and rewarding career is a major reason for the recent upswing in enrollment levels for women.

National figures from the early sixties to the middle seventies reflect a steady increase in the percent of women in the civilian labor force. In 1960, 33 percent of the labor force was comprised of women. By 1974, that figure had risen to 39 percent.[13] In California, the increase of women in the labor force over approximately the same period of time was much more dramatic. Two million women were in the work force in 1960; by October of 1975, there were 3.2 million, an increase of 60 percent in 15 years.[14]

Other recent demographic trends indicate reasons why more women are working now than a decade ago. As the following figures indicate, due to an increasing rate of dissolution of marriages, more and more women are finding themselves single and in need of supporting themselves.

Marriage in California[15]

	1973	1974	% Change
Marriages registered	169,319	160,887	5% decrease
Dissolutions of marriages reported	112,800	117,200	4% increase

13. Source: U.S. Working Women: A Chartbook, U.S. Department of Labor Statistics, 1975, Chart No. 2.

14. Source: California Women, Report of the California Commission on the Status of Women, December 31, 1975. The above figures include wage and salaried employees only, they do not include agricultural workers or self-employed women.

15. Ibid., p. 35. Figures prepared by the Office of the State Registrar of Vital Statistics, Department of Health, State of California.

Additionally, as of 1975, the California Commission on the Status of Women estimated that of the 35 million women in the work force, 13.3 million were either single, widowed, divorced, or separated.[16] Moreover, many of these women, as well as those who are married, must fully or partially support their children. The same Commission also notes that, in 1973, 82.8 percent of working women in the United States had children under the age of 17.[17]

The above figures on working women clearly offer insights into why women are also attending public postsecondary institutions in greater numbers. As with men, education offers women the prospect of a decent and well-paying job.

The following generalizations, which are based on data from Table III, can be offered concerning access for women in California's public institutions:

1. In 1968, one-fourth of the graduate student body in the University of California was female; nine years later, in 1976, approximately one-third was female.

2. The percent of undergraduate women at the University of California in 1976 was the same as that in 1968. Since 1972, female enrollments have increased from 44.7 to 46.6 percent.

3. The percent of undergraduate women in the California State University and Colleges in 1972 was virtually the same as that in 1960. Since 1972, undergraduate female enrollments have increased from 41 percent to 46 percent. (See Tables II and III.)

4. Since 1972 the number of women enrolled in the California Community Colleges has increased by approximately 4 percent.

5. The percent of women enrolled in graduate programs is considerably greater in the California State University and Colleges than in the University of California. More than half of the graduate student body at the California State University and Colleges is female.

Distribution

In assessing the distribution, by class level, of ethnic minorities, women and low-income students in public postsecondary education,

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16. Ibid., p. 52.

17. Ibid., p. 35.

TABLE III

ENROLLMENT IN FOUR-YEAR PUBLIC POSTSECONDARY EDUCATION
A HISTORICAL PERSPECTIVE: SEX

	1968[1]	1969[1]	1970[1]	1971[1]	1972[2]	1973[2]	1974[2]	1975[2]	1976[2]
University of California									
Women									
Undergraduate	46.1%	45.6%	44.7%	44.1%	44.7%	45.2%	45.6%	45.8%	46.6%
Graduate	25.4	26.0	25.7	25.9	26.6	27.9	29.7	31.2	32.4
Men									
Undergraduate	53.9	54.4	55.3	55.9	55.3	54.8	54.4	54.2	53.4
Graduate	74.6	74.0	74.3	74.1	73.4	72.1	70.3	68.8	67.6

	1960[3]	1966[3]	1972[2]		1974[2]	1975[2]	1976[2]
California State University and Colleges							
Women							
Undergraduate	--	41.0%	43.0%	41.3%	--	44.2%	44.7%	46.3%
Graduate	--	37.0	42.0	45.7	--	48.5	49.4	51.7
Men							
Undergraduate	--	59.0	57.0	58.7	--	55.8	55.3	53.7
Graduate	--	63.0	58.0	54.3	--	51.5	50.6	48.3

1. "Statistical Summary," Students and Staff, Office of Analytical Studies, University of California.

2. Postsecondary Education in California: Information Digest 1977, California Postsecondary Education Commission, 1977, pp. 16-18.

3. Report to the California Postsecondary Education Commission, in response to ACR 151 adopted by the California State Legislature, June 30, 1975.

attention must be directed to the participation rates, both among the public segments and within academic disciplines of individual segments.

A larger percent of Chicano/Latino and Black students are enrolled at the California Community Colleges than at the undergraduate level in either the California State University and Colleges or the University of California. In addition, Black and Chicano/Latino students are not distributed equally in the public four-year institutions. At the undergraduate level, both ethnic-minority groups have considerably greater representation in the State University than in the University.[18] At the graduate level, Chicano/Latino students have greater representation in the State University than in the University.[19] Black graduate students have approximately equal representation in both segments, although there apparently has been a constant decrease during the period 1973-76 in the percent of Black students at the University.[20]

With respect to distribution by discipline, national data reveal highly uneven participation by Black and Chicano/Latino students. The National Research Council, National Academy of Sciences, reports that approximately 53 percent of the 93 Chicano students awarded doctorates in 1972-73 received their degree in either the arts and humanities or in education. Approximately 14 percent received doctorates in the physical sciences, mathematics, and engineering.[21]

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18. The representation of Blacks is 6.9 percent (1976) in the State University and 4.0 percent (1976) in the University. It should also be noted that fewer Blacks were enrolled in the University in 1976 than in 1973. Similarly the representation of Chicano/Latino students is 7.5 percent (1976) in the State University and 5.2 percent (1976) in the University.

19. The representation of Chicano/Latino graduate students is 4.6 percent (1976) in the University and 5.4 percent (1976) in the State University.

20. The representation of Black graduate students is 3.9 percent (1976) in the University and 4.9 percent (1976) in the State University.

21. In contrast, approximately 23 percent of the white students received doctorates in the physical sciences, mathematics, and engineering, while 40 percent of the white students received doctorates in arts and humanities or in education. National Research Council, National Academy of Sciences, Doctorate Records File, 1974. See Appendix C.

Fall 1976 data for State University and University undergraduates indicate a similar tendency for Chicano/Latino, Black, and American Indian students to select the less-empirical disciplines over the more-scientific and mathematically-oriented disciplines. For example, when compared with white students, Chicano/Latino students, are more likely to enroll in the social sciences than in the physical sciences. Of the 8,704 upper division Chicano/Latino students attending the California State University and Colleges, 16 percent (1,391) are social science majors; while of the 2,468 upper division Chicano/Latino students attending the University of California, 26.7 percent (660) are social science majors.[22] In contrast, less than 1 percent (69) of all upper-division Chicano/Latino students in the State University are mathematics majors, and less than 1 percent (80) are physical science majors. Of all the upper division Chicano/Latino students attending the University, 1.6 percent (40) are mathematics majors and 2.5 percent (63) are physical science majors.[23]

Women students are also unevenly distributed throughout the various disciplines in public institutions. Nationally, over a three-year period, (1969-1972), the greatest proportion of bachelor's degrees earned by women were in disciplines such as home economics, library science, health professions, education, and fine and applied arts. The lowest proportion of bachelor's degrees earned by women were in disciplines like mathematics, engineering, agriculture, natural resources, and business management.[24]

In California, women students, when compared with men, are more likely to receive degrees in education, health professions, and letters, than

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22. By comparison, 10.3 percent (9,395) of white upper-division students attending the State University and 21 percent (7,746) of white upper-division students attending the University are social science majors. Postsecondary Education in California: Information Digest 1977, California Postsecondary Education Commission, pp. 24 and 26.

23. By comparison, 1.8 percent (1,074) of white upper-division students attending the State University and 2.1 percent (778) of white upper-division students attending the University are mathematics majors. Of the white upper-division students attending the State University, 2.3 percent (2,095) are majoring in the physical sciences; at the University, 4.1 percent (1,527) are majoring in this area. Ibid., pp. 24 and 26.

24. Women Graduates: A Statistical Survey of the Proportion of Women Earning Degrees in Higher Education in the United States; August 1975, Women's Equity Action League (WEAL), Washington, D.C.

in engineering and the physical sciences. The California State University and Colleges awarded 4,729 master's degrees to women in 1975-1976: 27 percent (1,444) were in education, 3 percent (166) in the health professions, 4.4 percent (233) in letters, 7.9 percent (423) in engineering, and 2.1 percent (114) in the physical sciences.[25]

A similar pattern exists in degrees awarded by the University of California. The University awarded 445 doctoral degrees to women in 1975-76: 13 percent (60) were in letters, 12 percent (55) were in education, 1 percent (5) were in engineering, and 6 percent (27) were in the physical sciences. By contrast, the University awarded 1,623 doctoral degrees to men in 1975-76: 6 percent (96) were in letters, 5.7 percent (93) in education, 17 percent (276) in engineering, and 16 percent (27) in the physical sciences.[26]

Women, Black, and Chicano/Latino students tend to enroll in the same general academic disciplines. A factor partially responsible for this academic clustering is the tendency for socially committed students to enroll in a discipline such as education or the social sciences with the intent of eventually helping their communities or ethnic groups advance themselves. Such individuals are often not aware that their community or ethnic group also needs professionals such as architects and engineers to build environments conducive to the needs of the community. Given the uneven distribution by sex and ethnicity in public postsecondary education, it is incumbent upon the segments to make present and future students aware of the diverse needs of their communities.

Another undesirable result of the tendency to enroll in certain disciplines and avoid others involves future job opportunities available to women and ethnic minorities. By clustering in the same general academic disciplines, these students eventually find themselves competing for the same jobs. In the process, they overlook a number of disciplines with better career prospects, leaving these open for white males. Frequently, the careers for which ethnic minorities and women prepare are less financially rewarding. In the long run, such a situation fails to help the minority group and adds to the frustration of breaking into the job market after graduation.

A recent report by the California Student Aid Commission suggests there is substantial inequality of opportunity for graduates of

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25. Postsecondary Education in California: Information Digest 1977, p. 56.

26. Ibid., p. 59.

secondary schools in low-income areas when compared to graduates in high-income areas.[27] Using data collected by the Student Aid Commission (page 35), the following generalizations can be offered:

1. When compared with students from high- and middle-income families, those from low-income families are more likely to attend a California Community College.

2. When compared with students from low-income families, those from high-income families are more likely to attend the University of California or an independent college or university.

3. The California State University and Colleges is enrolling a higher percent of low-income students than are the University of California and the independent colleges and universities.[28]

4. There is considerable variation in the family income of students from different ethnic backgrounds. White students in the Student Aid Commission survey came from families within an

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27. See: California Student Resource Survey, Number 2, prepared for the California Student Aid Commission by Brookdale Associates, August 1976.

28. The California Postsecondary Education Commission report entitled Equal Educational Opportunity in California Postsecondary Education: Part I stated that, "The independent colleges and universities in the survey appear to be more effective than the public four-year institutions in providing educational opportunity for low-income students." In a supporting footnote, the statement was further made that, "There seems to be surprising equality of opportunity for graduates choosing to enter a private college or university. Private college entrance rates for graduates from high-, middle-, and low-income schools are roughly equal to ten, seven, and eight percent." These statements were made on the basis of a legislative report entitled Unequal Access to College: Postsecondary Opportunities and Choices of High School Graduates, a staff report, Assembly Permanent Subcommittee on Postsecondary Education, California Legislature, November 1975.

    This conclusion from the legislative report does not provide a basis for generalization about statewide enrollment patterns. The 1972 and the 1976 Student Resource Survey reports indicate that both the University of California and the California State University and Colleges enrolled a larger percentage of severely low-income students than did the independent institutions, as well as a smaller percentage of extremely high-income students.

Student-Reported Parental Income
By Segment

Parental Income	U.C.	C.S.U.C.	C.C.	I.C.
Under $3,000	5.3%	9.8%	12.3%	3.2%
$3,000 to $5,999	4.4	8.3	11.1	5.5
$6,000 to $7,499	2.9	5.6	6.3	4.0
$7,500 to $8,999	3.5	6.5	7.7	5.0
$9,000 to $11,999	11.2	14.2	13.2	11.3
$12,000 to $14,999	12.7	15.9	13.4	12.6
$15,000 to $17,999	10.1	10.1	10.0	9.0
$18,000 to $20,999	10.7	8.3	7.4	10.3
$21,000 to $24,999	11.6	7.8	6.8	9.5
$25,000 and above	27.5	13.4	11.5	29.6
Mean	$18,347	$14,194	$13,090	$18,438
Median	17,970	13,056	11,864	17,800

Source: Student Resource Survey, No. 2, prepared for the California Student Aid Commission by Brookdale Associates, August, 1976, p. 75.

Mean and Median Student-Reported Parental Income
By Racial/Ethnic Group

Group	Parental Income	
	Mean	Median
White	$18,109	$17,441
Black	10,040	8,738
Chicano	10,382	9,259
Oriental	13,297	11,816

Source: Student Resource Survey, No. 2, prepared for the California Student Aid Commission by Brookdale Associates, August, 1976, p. 36.

average income twice that of Black students. The average parental income for white students was $17,441, as contrasted with $8,738 for Black students and $9,259 for Chicano/Latino students.

Persistence

Persistence is defined as staying in college and earning a degree in a timely manner. A thorough assessment of persistence by ethnic minorities and women requires initial identification of students from these groups, as well as follow-up data indicating whether or not they acquired the degrees for which they enrolled. The persistence rates for ethnic minorities and women then need to be compared with the rates for white students and male students, respectively. Given the present limitations in data gathering, a precise determination of persistence rates for students attending California public institutions cannot be made.[29]

On the basis of limited data supplied by the State University, there is evidence to suggest that Chicano/Latino, Black, and American Indian students are less likely to stay in college over a continuous four-year period than are white and Asian students. Of first-time freshmen who entered the State University in fall 1973, only 44.5 percent of the American Indian students, 47.1 percent of the Black students, and 45.2 of the Chicano/Latino students were still enrolled in Fall 1975. In contrast, 55.4 percent of the white students, 66.5 percent of the Asian-American students, and 54.0 percent of all students were still enrolled.[30]

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29. A thorough assessment of persistence also involves determining whether or not the student has attained his/her educational objective. Viewed from this perspective, persistence may or may not involve earning a degree.

30. Those Who Stay: Student Continuance in the California State University and Colleges, Technical Memorandum Number Six, June 1976, Division of Institutional Research, The California State University and Colleges, p. 5. According to the CSUC report, the continuation rate for Mexican-American students was 44.7 percent, and for Latin-American students the rate was 48.9 percent. These two rates have been combined to provide data for Chicano/Latino students as used above.

As noted in the following table, in each year during the period 1973-75, there was a significant decrease at the State University in the percentage distribution of Black and Chicano/Latino students between the freshman and senior classes. In contrast, the percentage distribution of the white students in the senior class was significantly larger than in the freshman class in each year during the same period. Asian-American students tended to maintain a similar distribution in both freshman and senior classes.

In terms of access, distribution, and persistence in public postsecondary education, there is clearly a great disparity between the educational opportunities for Black and Chicano/Latino students, as compared to those for white students, and between opportunities for women students as compared with those for men.

CALIFORNIA STATE UNIVERSITY AND COLLEGES' ETHNIC GROUP ENROLLMENT: VOLUNTARY SELF-IDENTIFICATION

Ethnic Group	Freshman	Sophomore	Junior	Senior
1973 Percentage Distribution				
American Indian	1.3%	1.3%	1.2%	1.1%
Black	8.6	8.0	6.3	5.1
Spanish-Surnamed	8.8	7.1	6.7	6.0
Oriental	6.4	5.8	5.6	6.5
Caucasian	71.8	74.5	77.1	77.8
1974 Percentage Distribution				
American Indian	1.5	1.4	1.5	1.3
Black	8.5	7.0	5.7	5.5
Mexican-American	6.8	6.3	5.6	5.3
Latin-American	0.9	0.9	1.0	1.0
Oriental	5.4	5.6	5.2	6.3
Caucasian	73.8	75.4	77.7	77.2
1975 Percentage Distribution				
American Indian	2.1	1.8	1.7	1.5
Black	9.4	7.5	6.2	5.6
Mexican-American	7.3	6.3	6.2	5.6
Latin-American	1.2	1.2	1.1	1.2
Oriental	5.8	5.5	5.4	6.2
Caucasian	70.7	74.5	76.2	76.6

NOTE: Students not identifying their ethnicity are excluded.

1. Source: Fall 1973 California State University and Colleges' Ethnic Group Enrollment Form; Table 4. TCSUC - Institutional Research, February 24, 1976.

2. Source: Fall 1974 California State University and Colleges' Ethnic Group Enrollment Form; Table 5. TCSUC - Institutional Research, February 24, 1976.

3. Source: Fall 1975 California State University and Colleges' Ethnic Group Enrollment Form; Table 1. TCSUC - Institutional Research, February 24, 1976.

V. BARRIERS TO EQUAL EDUCATIONAL OPPORTUNITY

As indicated by the preceding discussion, inequality of educational opportunity for Black, Chicano/Latino, and women students is a reality in California postsecondary education. In order to overcome this inequality, several institutional and noninstitutional barriers must be eliminated. These include noncompletion of high school, inadequate high school preparation, and culturally biased admissions tests, as well as various educational, cultural, and psychosocial attitudes, policies, and practices. Each of these barriers should be considered by the segments in their efforts to develop effective student affirmative action plans.

Barrier 1: Inadequate High School Preparation

There is a higher probability that Black and Chicano/Latino students, as compared to white students, will attend inferior elementary and secondary schools and thereby receive inadequate academic preparation. This problem results from the disproportionate number of minorities who attend poor inner-city schools, as well as from discrimination in housing and employment, which concentrates poor and unemployed minorities in restricted geographical areas.[1]

State and federal legislation recognizes that minority students of low-income background must overcome educational barriers resulting from numerous societal ills. This recognition is reflected in public school financing through such programs as:

Federal

Title I of the Elementary and Secondary Education Act of 1965 - Compensatory Education Act (P.L. 89-10 as amended by P.L. 93-380)

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1. A report from the California Department of Education indicates that more than

> . . . more than 145,000 Blacks, 34 percent of the statewide total, attended schools that were 90 percent or more Black, and 53 percent of the Black pupils in the State attended schools that were 50 percent or more Black. . . . About 46,000 Spanish-surnamed pupils, 6 percent of the statewide total, attended schools that were 90 percent or more Spanish-surnamed and 32 percent of the State's Spanish-surnamed pupils attended schools that were 50 percent or more Spanish-surnamed. Racial and Ethnic Distribution of Pupils and Staff in California Public Schools, Fall 1973, California Department of Education, November 29, 1974, p. 7.

Title VII of the Elementary and Secondary Education Act of 1965 - Bilingual Education Act (P.L. 89-10 as amended by P.L. 93-380)

State

The Educationally Disadvantaged Youth Program - SB 90 (Gonsalves/Moretti, 1973)

Bilingual Education - AB 2284 (Chacon, 1972) and AB 1329 (Chacon, 1976)

Miller-Unruh Basic Reading Act (Miller/Unruh, 1965)

These various acts support special educational programs and services for disadvantaged students in the form of additional teachers and aides to lower the teacher-student ratio, specialized staff development, increased parental and community involvement, and instructional materials and equipment.

Despite these efforts, large numbers of students in need of such services do not receive them at the present time. Although definitions of the target population vary among programs and data are somewhat inconsistent, the State Department of Education estimates that between 1 and 1.2 million students from educationally disadvantaged backgrounds need these specialized services. However, due to insufficient resources, only between 550,000 and 650,000 students actually benefit.

There are several factors to consider in measuring the success of elementary and secondary schools in providing adequate preparation for postsecondary education. These factors include school holding power, development of reading skills, grade repetition, and overageness.[2]

School holding power provides an indication of the amount of formal education a student receives. The dropout rate for Black and Chicano/Latino students is significantly higher than that of white students. According to a 1974 U.S. Census report, for example, the proportions of all white males and females who had completed four years of high school were 32.8 percent and 40.7 percent, respectively.[3] In contrast, all Black males and females had a high school completion rate of 25.1 percent and 26.3 percent, respectively.

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2. These factors are discussed in The Unfinished Education: Outcomes for Minorities in the Five Southwestern States, October 1971; Mexican American Educational Series, Report II, a report of the U.S. Commission on Civil Rights, Washington, D.C.

3. U.S. Census, Statistical Abstracts of the United States, 1974, Table 187.

The U.S. Commission on Civil Rights summarized California high school holding power as follows:

California School Holding Power[4]

	Grade 1	Grade 8	Grade 12	Enter College
Anglo	100.0	100.0	85.7	46.9
Mexican-American	100.0	93.8	63.8	28.2
Black	100.0	97.3	67.3	34.0

These data indicate that Chicano/Latino and Black students are twice as likely to leave high school before graduation than are white students.[5]

Poor reading achievement is directly related to the dropout rate. Black and Chicano/Latino students in elementary and secondary schools are more likely to read below certain grade levels than are white students.[6] On standard achievement tests approximately 60 percent of all Black and Chicano/Latino graduates read below a twelfth-grade level, with approximately 20 percent below a ninth-grade level.[7] In contrast, approximately

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4. U.S. Commission on Civil Rights, Washington, D.C., Ibid., p. 14.

5. Additional supporting evidence for this conclusion are included in Appendix D.

6. Evidence from a recent legislative report indicates that students from low-income high schools are more likely to have inferior reading skills than are students from middle- and high-income schools. To illustrate, the median reading score for graduates of high-income schools was 65.9, while the median reading score for graduates from low-income schools was 15.3. Unequal Access to College: Postsecondary Opportunities and Choices of High School Graduates, a staff report, Assembly Permarent Subcommittee on Postsecondary Education, California Legislature, November 1975. This report was based upon a sample of 1,592 respondents to a survey of 20 Los Angeles high schools, conducted in May 1974.

7. See The Unfinished Education: Outcomes for Minorities in the Five Southwestern States, p. 28. See also Okada, Tetsuo, et al., Dynamics of Achievement: A Study of Differential Growth of Achievement Over Time, Tech. Note No. 53, National Center for Educational Statistics, Office of Education, U.S. HEW, January 1968.

30 percent of all white graduates read below the twelfth-grade level. These data on reading ability are particularly important, given the fact that by the twelfth grade approximately one-third of Chicano/Latino and Black students have already dropped out of school.

Two other measurements of school achievement are grade repetition and overageness for grade assignment. National figures suggest that Chicano/Latino students, when compared with white and Black students, experience a significantly higher rate of grade repetition and overageness. Most grade repetition is likely to occur during the first grade, and Chicano/Latino students are twice as likely to repeat that first year.

Percent of Students Repeating Grades in the First and Fourth Grades by Ethnic Group[8]

	White	Black	Mexican-American
Grade Repetition First Grade	5.6%	5.7%	9.8%
Grade Repetition Fourth Grade	1.6%	1.0%	2.2%

As a result of this high rate of early grade repetition Chicano/Latino students are more likely to be overage in secondary school than are white and, to a lesser degree, Black students.

Percent of Pupils Two or More Years Overage, by Grade and Ethnicity[9]

Grade	White	Black	Mexican-American
1	0.9%	0.7%	1.7%
4	0.7	0.7	2.1
8	0.8	---	2.3
12	0.1	1.9	2.3

The high rate of grade repetition results in overageness and a consequent increase in the dropout rate.

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8. U.S. Commission on Civil Rights, Ibid., p. 35.

9. U.S. Commission on Civil Rights, Ibid., p. 37.

An additional factor affecting the success of ethnic minorities in elementary and secondary school is the availability of teachers from similar ethnic backgrounds. Teachers from minority ethnic backgrounds provide role models and a sensitivity to the problems and needs of students from similar backgrounds.

In California, Chicano/Latino and Black teachers are underrepresented in public education. While Chicano/Latino students account for 17.2 percent of all students statewide, Chicano/Latinos account for only 4.1 percent of all male teachers and only 3.0 percent of all female teachers. Black students comprise 9.7 percent of all students statewide, while Blacks account for only 3.2 percent of all male teachers and 6.6 percent of all female teachers.[10] While the ratio of white teachers to white pupils is 1 to 19, the ratio of Black teachers to Black pupils is 1 to 45, and the ratio of Chicano/Latino teachers to Chicano/Latino pupils is 1 to 124.[11]

For ethnic-minority students from low-income backgrounds who receive inadequate preparation in elementary and secondary school, there is an increased probability of academic failure in college. Students who attend public or private schools in middle- or high-income communities are frequently exposed to college-level courses during their junior and senior years in high school. The transition to college is much easier for these students than for graduates from schools in low-income communities, who have probably not been exposed to the same advanced training. As a result, students with average or superior academic training in high school have a better opportunity to earn respectable grades during the first year of college. Moreover, high school graduates from low-income backgrounds are less likely to persist in college and complete their academic program in four years than are graduates from schools in middle- and high-income communities. A primary cause of this situation is the inadequate preparation received by those from the low-income communities.

For women, high school preparation is often characterized by a lack of encouragement by teachers and counselors. This unsupportive attitude is exemplified by the unofficial "tracking" of female students into a curriculum less-oriented towards success in college than that for male students. Tracking of female students in the public schools is quite noticeable when their mathematical preparation is compared to that of male students entering college.

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10. Racial and Ethnic Distribution of Pupils and Staff in California Public Schools, Fall 1973, California Department of Education, November 29, 1974, p. 8.

11. Ibid., Table 13.

Two separate studies conducted at the University of California, Berkeley, and at the University of California, Santa Barbara, have shown that males are more likely than females to have taken a four-year high school mathematics sequence required for majoring in science-oriented disciplines. At Berkeley in the fall of 1972, 57 percent of the males sampled had taken the required mathematics sequence, compared to only 8 percent of the females.[12] At Santa Barbara, in the Fall of 1973, 36 percent of the males sampled had taken the four-year sequence, compared to 16 percent of the females.[13]

Researchers involved in the Santa Barbara study uncovered some disturbing evidence as to why such a disparity exists by the time males and females are admitted as freshmen. According to their findings, males and females in grades two through twelve like or dislike mathematics at similar rates. They found no evidence to indicate that math was more "appealing" to or enjoyed by either sex. Similarly, the Santa Barbara researchers found that in the lower grades both males and females had an equal degree of confidence in their mathematical abilities. However, by the time they were in high school, both males and females had a greater degree of confidence in the mathematical abilities of the males. At some point in the educational process something occurred to weaken the confidence of females in their mathematical abilities. In addition, the researchers found evidence strongly suggesting that female teachers as well as male teachers expect male students to do better in mathematics.

The Santa Barbara researchers concluded that the so-called "Pygmalion effect" may be responsible for females not having confidence in their own mathematical abilities. These students are, to a certain extent, only able to perform in response to the expectations of their teachers. The "Pygmalion effect," in addition to poor counseling and academic preparation, may be an important causal factor in the minimal mathematical background female students have on graduation from high school.

Barrier 2: Shortage of Qualified Bilingual/Cross-Cultural Public School Personnel

Chicano/Latino students have the highest secondary-school dropout rate in California, compared to all other ethnic groups.[14] The initial cause of this high rate is limited or no English-language skill of the child

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12. "High School Mathematics as the Critical Filter in the Job Market," Lucy W. Sells, Proceedings of the Conference on Minority Graduate Education at the University of California, Berkeley, May 1973.

13. "Mathematics and Sex," John Ernest, Mathematics Department, University of California, Santa Barbara, April 1976.

14. See: "The California High School Dropout Survey," a report to the California Legislature . . . California Department of Education, Sacramento, 1976.

entering school and the inability of the school to build on the strengths the pupil brings to school. The inability of limited- or non-English-speaking pupils to understand a classroom instruction produces the previously mentioned pattern of grade repetition, resulting in over-ageness and a consequent increase in the dropout rate.

It has been only in the past decade that Congress and the state legislatures have moved to provide the financial support necessary for public schools to begin developing effective, alternative-learning modes for the limited- or non-English-speaking (LES or NES) pupil. The "Bilingual Education Act" of 1968 provided federal support to states whose public schools offered bilingual education programs. The Act specified that support could be used only by states to establish bilingual programs; the ultimate responsibility for maintaining such programs was at the state and local level.[15]

California began responding to this challenge in December of 1972 with the passage of AB 2284 (Chacon, 1972) known as the "Bilingual Education Act of 1972." AB 2284 provided an initial appropriation of $5 million for funding bilingual education programs in California.[16] Since then, the single most encompassing piece of legislation designed to improve bilingual education capabilities in California public schools has been AB 1329 (Chacon, 1976). This Bill is designed to coordinate State and federal resources from previous legislation by establishing uniform instructional-program guidelines and a Bilingual Teacher Development Grant Program, to be administered by the California Student Aid Commission. During Fiscal Year 1977-78, $350,000 will be allocated through the Grant Program to teachers for coursework leading to a bilingual/cross-cultural teaching credential or certificate. AB 1329 also states that each "limited English speaking" (LES) pupil enrolled in a California public school (K-12) shall receive instruction in a language understandable to the pupil, whether it is an organized classroom program or an individualized program of instruction.

The U.S. Supreme Court has also recognized the need for bilingual education. Through a unanimous decision in Lau v. Nichols, (414 U.S. 563), a case involving the San Francisco Unified School District, the Court found that equality of treatment for all students does not solely entail the use of the same facilities, textbooks, teachers, and

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15. In 1975-76 for example, California received $21.4 million, or 26 percent of the federal funds appropriated through the "Bilingual Education Act." Source: Toward Meaningful and Equal Educational Opportunity: Report of Public Hearings on Bilingual-Bicultural Education, by the Special Subcommittee on Bilingual-Bicultural Education of the California State Assembly, July 1976.

16. Ibid., p. 8.

curriculum. It held that any likelihood of a "meaningful" education was effectively foreclosed for students unable to understand English.[17]

Despite support already provided by State funds, the need for expanded bilingual education in California public schools remains. Although bilingual programs are funded for LES and NES students of American Indian, Asian, Filipino, and Portuguese descent, the greatest area of need is for Chicano/Latino students. In the 1975-76 school year, there were 290,000 LES and NES students in California public schools.[18] There were 175,136 Chicano/Latino students in the former group and 49,481 in the latter.[19]

Currently, there is an inadequate number of certified teachers in the State's bilingual programs, compared to the number of students who require such teachers. In 1974, there were approximately 790 teachers in State bilingual programs, serving some 188,000 students. The approximate ratio of LES and NES students to teachers was 1 to 238. Sixty-five percent of these teachers were judged bilingual, and only 50 percent of these were judged bilingual-biliterate.[20] The Commission for Teacher Preparation and Licensing estimates that by the spring of 1979, 1,548 candidates will complete bilingual credential programs at the California State University and Colleges and the University of California.[21] If all the above figures are accurate, by the fall of 1979, there will be approximately 2,300 trained bilingual-biliterate teachers to meet the needs of at least 290,000 limited- or non-English speaking students. There is an urgent need for the public postsecondary institutions to expand their programs for training bilingual-biliterate public school personnel.

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17. Supreme Court of the United States, Syllabus, Lau et al. v. Nichols et al. The Court held that:

> Where inability to speak and understand the English language excludes national origin-minority group children from effective participation in the educational program . . . the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students.

18. California State Department of Education, "Language Dominance Survey, 1975-76," Office of Program Evaluation and Research.

19. In 1973, there were 9,373 limited-English speaking Asian students and 1,630 non-English speaking Asian students. California State Department of Education, Ibid., p. 2.

20. Anthony J. Salamanca, "Bilingual/Cross-Cultural Teacher Shortage in California," a paper prepared for the Bilingual/Cross-Cultural Teacher Preparation Workshop, June 1974.

21. Status Report on "Bilingual/Cross-Cultural Teacher Preparation," prepared by the Commission for Teacher Preparation and Licensing, February 15, 1977, p. 3.

Barrier 3: Family Income and College Costs

A major barrier to equal educational opportunity for ethnic minorities is low family income. Black and Chicano/Latino students are affected more directly by the cost of attending college because their average family income is considerably lower than that of white students.

Mean and Median Student-Reported Parental Income[22]
By Racial/Ethnic Group

Group	Parental Income Mean	Median
White	$18,109	$17,441
Black	10,040	8,738
Chicano	10,382	9,259

While the cost of attending a college or university varies by campus and segment, the minimum expenditure for a student living away from home will exceed $2,000 per year. A student attending the University of California and not living with his parents can expect to spend between $2,500 and $3,500 annually for student fees, books and supplies, room and board, and miscellaneous expenses.[23] This is a significant annual expenditure for a family with an average annual income of $10,000.

While federal and State financial aid programs have provided a means for many ethnic minorities from low-income families to attend college, the following generalizations can be made about the impact of family income and college costs on the participation and persistence of ethnic minorities:

1. Low-income students depend more on financial assistance to attend college than middle- and high-income students. According to information from the Student Aid Commission, Chicano/Latino, Black, and American-Indian students depend on student aid programs for approximately 60 percent of money needed to pay for their education. In contrast, white and Asian-

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22. California Student Resource Survey Number 2, prepared for the California Student Aid Commission by Brookdale Associates, August 1976, p. 36. A sample of 12,846 students was used in the Commission study.

23. The UCLA General Catalog for 1976-77 estimates an average student budget of $2,046 for a student living on campus, and $3,000 for a student living off campus.

American students fund their education primarily from family contributions, and depend upon student aid for only 40 percent of the balance.[24]

2. Low-income students are more likely to enroll in the California Community Colleges and the California State University and Colleges than in the University of California and the independent colleges.[25]

3. Students from high- and middle-income families are more likely to attend college than students from low-income families.[26]

4. Black high school graduates are less likely to attend college than white graduates in all family-income ranges, except $5,000 to $7,499 (See Chart 6).[27]

5. High-ability/high-income students have a higher persistence rate than high-ability/low-income students.[28]

6. When compared to high- and middle-income students, low-income students are less likely to enroll in, and successfully complete in a timely manner, programs requiring prolonged and/or expensive preparation. Consequently, there are a limited number of ethnic minorities in the health professions and other fields requiring expensive training.[29]

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24. California Student Resources Survey, Number 2, p. 79.

25. Ibid., p. 35.

26. See appendix D.

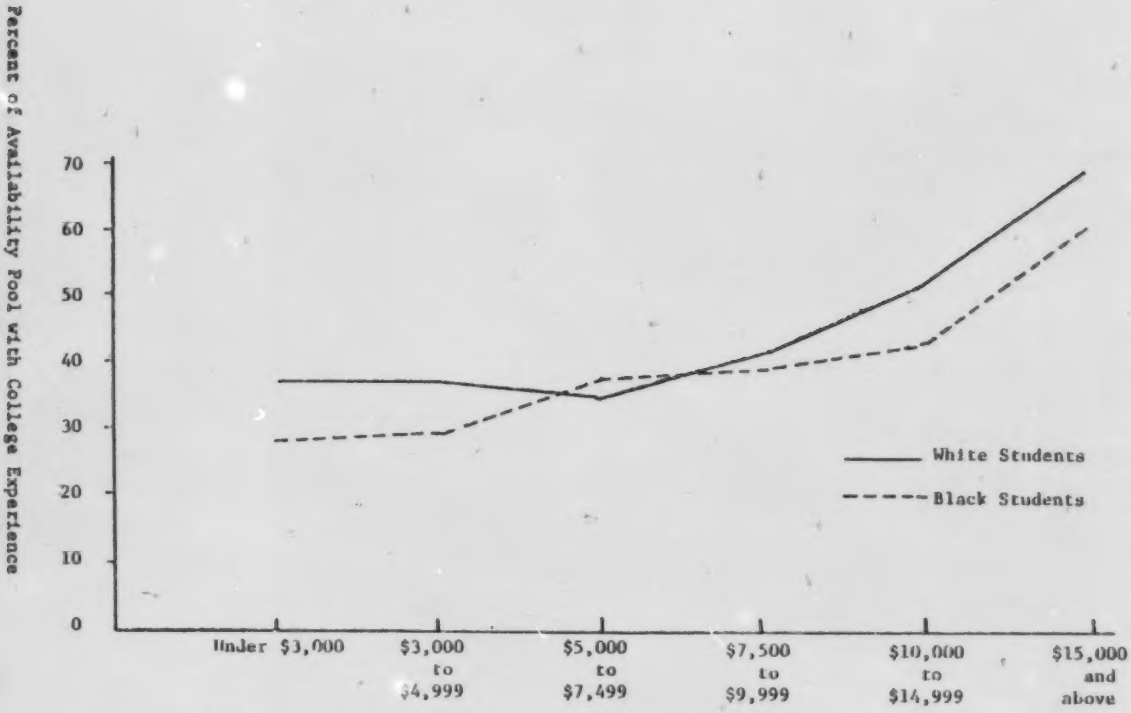
27. While information is not available for Chicano/Latino students, it is probable that the same basic generalization would be accurate.

28. Of the high-ability/low-income freshmen who entered college in the fall of 1972, 74 percent returned for the second year; in contrast, the return rate for high-ability/high-income freshmen was 90 percent. "Race, Poverty, and Colleges" by Lois D. Rice, in Proceedings from the National Invitational Conference on Racial and Ethnic Data, Elizabeth A. Abramowitz, Institute for the Study of Educational Policy, Howard University Press, 1976, p. 55.

29. A recent study concerning trends in health professions concluded, "except for veterinary medicine, the health professions attracted a predominantly male and non-Black group of students in 1974, as they had in 1966." Women and Minorities in Health Fields: A Trend Analysis of College Freshmen, Volume 1, Policy Analysis Service, American Council on Education, 1976, p. 227. To illustrate the effects of this condition, as of 1972, 1 out of every 500 white Americans was a doctor, compared to 1 out of every 3,800 Blacks. In the same year, there was 1 Black dentist for every 11,500 Black persons. U.S. Health Resources Administration, Department of Health, Education, and Welfare, Fact Sheet, Washington, D.C., 1975.

Chart 6

PERCENT OF COLLEGE AVAILABILITY POOL WITH COLLEGE EXPERIENCE, AGE 18-24,
BY RACE AND FAMILY INCOME, October 1973



SOURCE: U.S. Census, Social and Economic Characteristics of Students, October, 1973, Table 13.

The cost of attending college is also an important barrier for women not financially supported by their parents. According to the California Commission on the Status of Women, approximately 20 of the 35 million women in the work force in 1975 were employed because of basic economic necessity.[30] That is, they were either single, widowed, divorced, separated or living with husbands whose annual income was below $7,000.

Women have a lower earning power than men. Nationally, according to the California Commission on the Status of Women, for every $1.00 earned by a man, a woman earns $.57. In California, a woman earns $.49 for every $1.00 earned by a man.[31]

While all women earn significantly less than either white or Black men, ethnic-minority women not only earn less than their male counterparts, they also earn less than white women. In terms of earning power, ethnic-minority women are at a disadvantage both on the basis of ethnicity and sex.

Median Annual Earnings, March 1972[32]

	Female	Male
Spanish Speaking	$2,647	$ 5,786
Black	5,147	7,301
White	5,998	10,593

The above discussion does not account for women who are not currently working. Undoubtedly, many of these women, as well those in the labor force, have considered or made attempts to enter college. Financial realities for women, however, do not encourage such attempts.

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30. Op. cit., California Women, p. 52.

31. Ibid., p. 51.

32. "Spanish Speaking Women and Higher Education: A Review of Their Current Status," Project on the Status and Education of Women, Minority Women and Higher Education #2, Association of American Colleges, 1975.

Barrier 4: Curriculum Planning and Student Personnel Services

Women and ethnic-minority students are affected more directly than white male students by such variables as (1) the location and scheduling of courses, (2) academic opportunities for part-time students, (3) counseling and orientation services, and (4) the availability and cost of child-care facilities.

In addition to economic and employment status, the opportunities for mature women to attend public postsecondary institutions are restricted by several factors, including the availability of transportation to the campus, personal and/or husband's work schedule, and the presence and ages of children. The location and scheduling of courses, therefore, can either greatly facilitate or inhibit women's opportunities to enroll in and complete degree programs.

As with ethnic minorities, many women can only attend college on a part-time basis, given their job and family commitments. Traditionally, the California Community Colleges--and increasingly, the California State University and Colleges--have integrated part-time students into the curriculum. At the University of California, however, there is still the assumption at the undergraduate level (and to an even greater extent at the graduate and professional levels), that all students are full-time students. This attitude may offer a partial insight into the low enrollment levels of women in graduate and professional schools.[33]

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33. The indifference to the needs of part-time students indicates how institutions such as the University of California promote sexism in an unconscious fashion, despite an avowed commitment to equal educational opportunity. As articulated by Arlie Hochschild in her article "Inside the Clockwork of Male Careers," women are affected by an educational-career system not so much by malevolent disobedience" to good rules, as by rules that have been set up to favor half the population in the first place. As a result:

> It is admittedly hard to distinguish between women who remove themselves from the university and women who are removed or are moved to remove themselves, for there are innumerable aspects of graduate school that are not quite discriminatory and not quite not discriminatory either.

Arlie Russell Hochschild, "Inside the Clockwork of Male Careers," from Women and the Power to Change, The Carnegie Foundation for the Advancement of Teaching, 1975, p. 55.

As long as women continue to be assigned the primary responsibility for rearing children, the location and scheduling of classes, as well as the time required to earn a degree, will remain potential barriers for the equal participation of women in postsecondary education.

The absence of quality child-care facilities is a major factor limiting educational opportunities for women, particularly those from low-income families. For example, in a study of the problems of women enrolled at the University of California, Berkeley, particular emphasis was given to "the lack of high quality child care facilities for members of the University community."[34]

If parents of young children are to attend postsecondary institutions, programs must be established to provide child care at a cost which can be afforded by low-income students.[35]

While considerable progress has been made in the past ten years, some ethnic minorities and women are still the victims of biased or inadequate counseling. As a result of high school and college counseling,

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34. Report of the Subcommittee on the Status of Academic Women on the Berkeley Campus, Berkeley: University of California at Berkeley, 1970.

35. The Newman report recommended: "Facilities should be provided (at educational institutions) which give recognition to the fact that a woman is not a female bachelor. The establishment of child care centers is perhaps the most important practical step to be taken, but other facilities such as access to housing arrangement and health services are needed." Frank Newman and Members of the Commission, Report on Higher Education, Report to the Office of Education, Washington, C.C., 1971.

women are frequently urged to limit their career aspirations to traditional "women's occupations."[36] Similarly, ethnic minorities are either not aware of or encouraged to take the required classes needed to successfully complete a degree program. Additionally, women and ethnic minorities need to be apprised of graduate- and professional-school opportunities, as well as those available in the job market.

Barrier 5: Faculty and Staff Attitudes

The attitudes of some faculty and staff toward women and ethnic-minority students are real barriers to successful participation in postsecondary education. While these attitudes cannot be documented in the same manner as, for example, the availability of child-care facilities, they are manifested in several ways, including: (1) lack of active faculty support and encouragement, (2) discrimination in job placement before and after graduation, and (3) the absence of ethnic-minority and female role models among faculty and administrators.

The amount of active encouragement and support which faculty members give to women and ethnic minorities varies from campus to campus, as well as within faculty at any given campus. As the Berkeley study of

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36. The Report of the Subcommittee on the Status of Academic Women on the Berkeley Campus offered several examples of counselor bias against women, including the following:

> . . . my parents were told not to allow me to follow a science major! They were contacted privately and told they were very foolish to allow me to continue a major in physics or nuclear engineering because a woman would "never" be hired in these fields.
>
> I entered UC as a freshman and upon my first interview with an adviser, was advised that it was silly for a woman to be serious about a career, that the most satisfying job for a woman is that of wife and mother, etc. The advice was repeated upon several later occasions. . ..

See also, "Perspectives on Counselor Bias: Implications for Counselor Education," John Pietrofesa and Nancy K. Schlossberg, The Counseling Psychologist, 1973, Vol. IV.

women graduate students indicates, however, there is a significant degree of indifference to their training, sometimes active discouragement of their work, and a reluctance to help them obtain financial aid or jobs.[37] The same study concluded that white men are more likely to receive teaching assistantships when competing with qualified women and ethnic minorities.

There is a highly significant, positive correlation between the number of women and ethnic-minority faculty on campus and the number of women and ethnic-minority students graduating from such campuses.[38] However, women and ethnic minorities are greatly underrepresented in the faculties at California public institutions. In the Community Colleges, for example, less than one-third of the instructors are women, although almost one-half of the student body is female. In Los Angeles Community College District, while over 20 percent of the student body is Black, only 8 percent of the faculty is Black. The effects of discrimination against women are even more pronounced at the administrative level, with women holding only 13 percent of administrative positions in the Community Colleges, statewide.[39] The record in the four-year public institutions is similar for women, Blacks, and Chicano/Latino faculty and administrators.

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37. Op. cit., Report of the Subcommittee on the Status of Academic Women on the Berkeley Campus. A report concerning the mathematics program at the University of California, Santa Barbara, concluded that there would be a significant increase

> . . . in the enrollment of women in mathematics courses if only a greater effort is made to encourage them to do so. A survey was conducted at Stanford, of women majoring in natural sciences, mathematics, and engineering. These women reported having received less encouragement to study mathematics than did any group of Stanford males, even those males who were majoring in history or the humanities. . ..

Mathematics and Sex, by John Ernest, Mathematics Department, University of California, Santa Barbara, April 1976, p. 12.

38. See M. Elizabeth Tidbell, "Perspective on Academic Women and Affirmative Action," Education Record, Spring, 1973, pp. 130-135.

39. Fall 1975, Racial and Ethnic Survey, Board of Governors of the California Community Colleges.

Barrier 6: Social and Cultural Constraints

As noted earlier, some of the barriers to equal educational opportunity for ethnic minorities and women are beyond the control of educational institutions. A number of these have been described. Such barriers include economic status, number and ages of dependents, place of residence, and marital status. Other equally important barriers include roles and attitudes of family members, personal motivation, and self-perception.

For many women, especially those from ethnic minority backgrounds, there are critical social and cultural constraints. By definition these constraints are "invisible," and thus not readily subject to quantitative documentation, as are many of the barriers described above. Additionally, in attempting to pinpoint such constraints, it is often difficult to separate them from the realm of individual prerogatives. The subtle and inexorable interplay between these two forces makes an absolute distinction impossible. This propensity to elude quantification and precise definition does not, however, minimize the impact of social and cultural constraints on equal education opportunity.

To participate and succeed in the academic world, women must adopt behavior which is generally characterized as "competitive" and "assertive." While these characteristics are totally in keeping with the accepted role of men in society, they are diametrically opposed to the ideal view of women. Women have been taught to adjure competition, to be passively indifferent in competitive environments. Thus, upon entering academe women must shed their social mold, and develop a new, assertive way of presenting themselves.

Having entered the academic world, women must cope not only with all the problems of functioning in a traditionally male-dominated environment, but must also contend with mores which frown on their competing with or outperforming men on an intellectual basis. The dilemma presented to women at this point is often a very personal one. "A logical extension of this problem is the woman's view of her relationship to men and how it may be affected by her choice of career."[40]

Adding to the problems confronting women in the academic world are their biologically and socially assigned functions. Women are responsible not only for bringing children into the world but they are also mainly

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40. The Educated Woman: Prospects and Problems, formulated by the Committee on the College Student, Group for the Advancement of Psychiatry, New York, 1975, p. 150.

responsible for rearing them during their formative years. This dual role--usually occurring when women are between the ages of twenty and thirty--comes at about the same time male students are engrossed in meeting the demands of graduate or professional school. Thus, if women are to fulfill their biological or societal function, the added burden of obtaining an education in an unsupportive environment becomes a formidable task.

For ethnic-minority women, the social and cultural constraints are often twofold. They must deal with attitudes of the dominant society, as well as with the attitudes of their own particular culture. This twofold situation helps, in part, to explain the particularly low enrollments of Chicanas in public postsecondary education. To a greater extent than white women, their male-dominated culture and religion define the Chicana's role as centered around the family. As with their men, Chicanas struggle to overcome the scars and realities of racism. However, in an era of "affirmative action," both in education and in the labor force, gains for Chicanas may very well be at the expense of Chicanos.[41] Chicanas thus receive little encouragement either as women or as members of a male-dominated ethnic group, to enter postsecondary education.

Barrier 7: Admissions Tests

Admissions tests have been developed as a theoretically objective method to select students with potential to succeed in postsecondary education. While these tests have a legitimate function, they have tended to limit the educational opportunities of low-income and ethnic-minority students in California.

There is a positive relationship between scores on standardized tests and the parental income of the student taking the test. For example, for students taking the Scholastic Aptitude Test (SAT), those from low-income families are more likely to earn low scores, while students from middle- to higher-income families are more likely to earn high

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41. As recently noted by a Chicana in the Civil Rights Digest:

> Our men have not shared social and economic equality with the men of the majority culture. Gradually jobs have opened up for minorities on higher rungs of the career ladder. When one opens up for a Mexican, it is assumed that the Mexican would be a male.

Source: Consuelo Nieto, "The Chicana and the Woman's Rights Movement: A Perspective," in the Civil Rights Digest, Volume 6, Number 3, Spring 1974.

scores. In California in 1975-76, the average family income for students who earned 650 or more points on the SAT was $26,400. Students in the lower range--below 350--had a mean family income of $14,500.[42]

All applicants for admission to the four-year public institutions in California are required to complete standardized tests.[43] While the scores from these tests are frequently not a major determinant of an individual's admission to the institution, they have two major implications for some ethnic minorities.

First, the process of filing the application to take the test, paying the fees, and meeting the several deadlines, causes many potential students from low-income and/or ethnic-minority backgrounds to avoid applying for admission.[44] Second, the test scores, when used as a criterion for admission, tend to limit the number of Chicano/Latino and Blacks eligible for admission. A recent study of the selection process of minority college students at four University of California campuses concluded that:

> Black and Chicano students are certainly not benefited by use of the SAT in the selection of college students--at least at the

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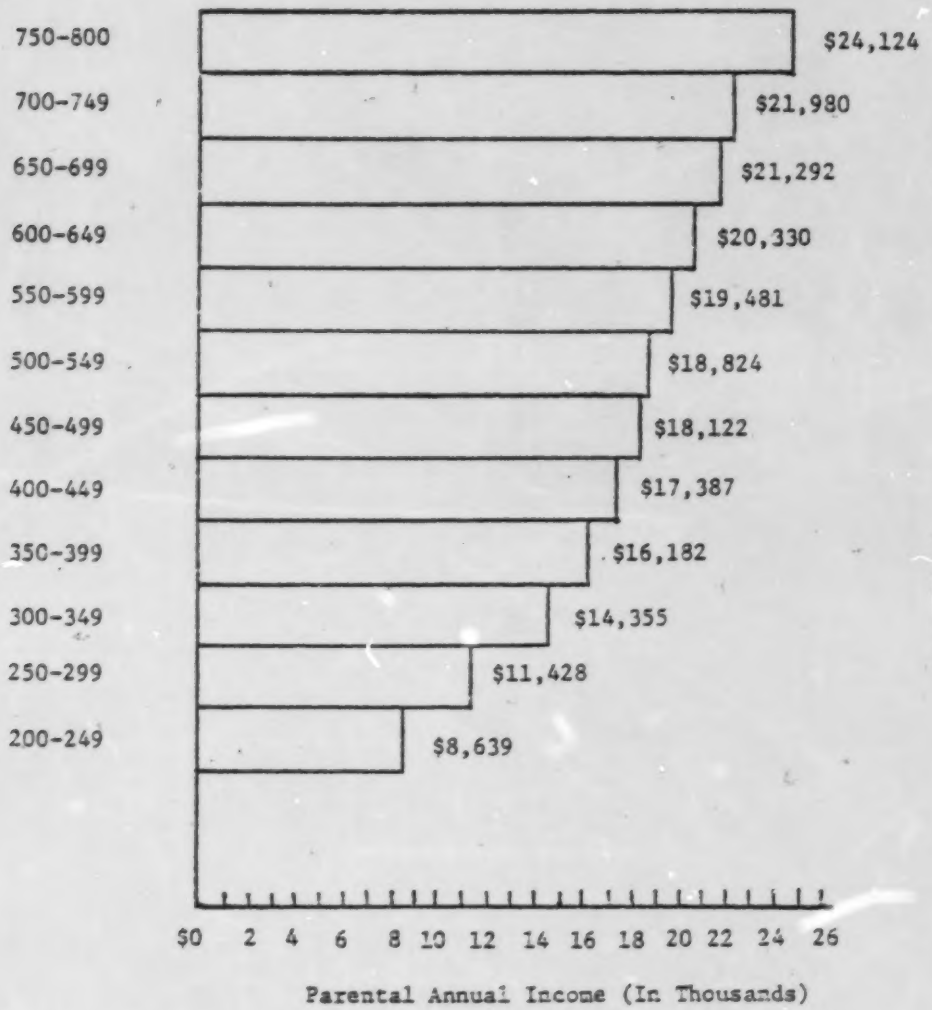
42. California College-Bound Seniors, 1975-76. College Entrance Examination Board, 1976, p. 15.

43. All freshman applicants at the University of California must take the Scholastic Aptitude Test (SAT) and three Achievement Tests (AT), which must include (a) English composition; (b) one from among the social studies or one from among the foreign languages; and (c) one from mathematics or one from among the sciences. If the applicant's scholarship average in the required high school subjects is 3.0 to 3.09, inclusive, he or she must earn a total score of 2,500 or higher. If the average was 3.1 or higher, no minimum test score is required. According to the University, the scores of all applicants are used to assist in counseling, guidance, and placement.

    All freshman applicants of the California State University and Colleges must take either the CEEB Scholastic Aptitude Test (SAT) or the American College Testing Program examination (ACT). An applicant must have a high school grade point average and composite score on either test which places him/her among the upper one-third of California high school graduates.

44. While fee waivers are available, they are not as widely available as desirable, given the number of potential applicants from low-income communities.

MEAN PARENTAL ANNUAL INCOME BY SAT SCORE RANGES FOR HIGH SCHOOL SENIORS
1973-74 Academic Year



SOURCE: College Bound Seniors, 1973-74, College Entrance Examination Board, New York, New York: CEEB, 1974. Table 21.

institutions we have investigated. In every instance, far fewer Black and Chicano students would be selected when the SAT is used than when it is not.[45]

When institutions use standardized test scores as one criterion for evaluating applications, they are depending on seemingly neutral standards which have an adverse impact on low-income and ethnic-minority applicants. The purposes and utility of these tests should be evaluated by each segment.

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45. "An Analysis of Types of Errors in the Selection of Minority College Students," by Roy D. Goldman and Mel H. Widawski, Journal of Educational Measurements, Vol. 13, No. 3, Fall 1976, p. 196.

The study also concludes that

> . . . the use of the SAT would result in a considerable reduction in the number of admissible Chicano students . . . in UCI and UCD, the use of the SAT would eliminate more than half of the Chicano students who would have been admissible if HSGPA alone were used for screening. In the other two universities, the use of the SAT would render inadmissible nearly a third of the Chicano students who would have been admitted using HSGPA alone.

Ibid., pp. 188-189.

VI. STUDENT AFFIRMATIVE ACTION PROGRAMS

The elimination of barriers to postsecondary education for ethnic minorities and women entails much more than a willingness on the part of the segments to provide underrepresented groups equal opportunities for participation. Previous cultural idiosyncracies and inadequate educational preparation undermine efforts to increase participation. However, as progress is made in the reduction of institutional barriers, programs and policies have been developed to address the cultural and educational barriers that limit underrepresented groups.

The University of California has played a leadership role in responding to the need for increased participation of ethnic minorities. In 1964, the Regents established an Educational Opportunity Program (EOP) designed to recruit and provide retention services for minority and/or low-income undergraduates. Operating on an initial budget of $100,000, one hundred students participated in the program during its first year. Ten years later, 8,000 students participated; this time the budget was approximately $[illegible] million.[1]

In 1975, in response to a leveling off of Chicano/Latino and Black enrollments, the University developed a Student Affirmative Action Program to supplement the activities of campus EOPs. The stated purpose of the program is to increase:

> attention being directed toward the motivation of students at the intermediate school level, provision of additional information about University opportunities to capable high school and community college students, and maintenance of adequate support programs for entering and continuing students.[2]

The program has been supported financially from three sources: State funds, Educational Fee reserves, and Opportunity Funds. Chapter 1017, Statutes of 1975 (AB 2412 Meade) provided $1 million from the State's General Fund over a two-year period. State support has been matched by an equal contribution from the University's Educational Fee reserve account. When the 1976-77 State Budget provided an increased State contribution of $275,000, the University again provided a matching contribution. The University has also utilized Opportunity Funds to support systemwide coordination of the program. These expenditures are summarized in the following table.

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1. "Program Outline: Partnership for Equal Opportunity," University of California, May 1976, Office of the Vice President and Student Relations.

2. "University of California Response and Comments on Issues Proposed for the Five-Year Plan, 1977-1982 of the California Postsecondary Education Commission," September 1976, p. 2.

Student Affirmative Action Budget:
1975-76 and 1976-77

	1975-76	1976-77
I. Early Outreach	$ 54,000 (U)	$ 462,000 (U)
II. High School and Community College Outreach	292,000 (U)	292,000 (U)
III. Financial Aid	(small administrative expenditure)	1,100,000 (S)
IV. Support Services	--	550,000 (1/2S) (1/2U)
V. Coordination	62,000 (U)	69,000 (U)
	$408,000	$2,473,000
Total projected expenditures for two-year period:		$1,506,000 (U) $1,375,000 (S) $2,881,000

U = University funds

S = State funds

* = Does not include EOP expenditures

Source: "University of California Student Affirmative Action Program, 1974-78," as submitted to the Department of Finance in a Budget Change Proposal for 1977-78 Fiscal Year, October 11, 1976, p. 128.

The California State University and Colleges began affirmative action activities in Fall 1966-67 with the inclusion of "disadvantaged" students under the "exception admissions" provisions of Title 5 of the California Administrative Code.[3] At that time, no formal policy had been issued with respect to the number of disadvantaged students to be admitted under Title 5. Currently, within the spaces designated for exception admissions, the State University is authorized to admit 2 percent of all persons anticipated to be admitted as first-time freshmen, for a given academic year, under the disadvantaged category, and 2 percent of all applicants for admission as undergraduate transfer students.[4]

Unlike the University of California, systemwide student affirmative action programs in the State University and Colleges were created and funded by the Legislature. The system's Educational Opportunity Program (EOP) received its mandate under Chapter 1336, Statutes of 1969 (SB 1072). The program was allotted $2.35 million to begin meeting the needs of not more than 3,150 disadvantaged students, who were to receive financial aid, academic tutoring, and counseling.

State funding for the State University's Educational Opportunity Program has expanded from $3.6 million in 1972-73 to approximately $10.2 million in 1976-77. The rate of increase in State financial support has not been constant from year to year, as the largest increase has occurred during the past two years. In the utilization of State funds, increasing emphasis is being placed upon the retention of EOP students by providing expanded support services beyond the first year. The historical pattern in the awards and expenditures of the State University's Educational Opportunity Program is summarized in the following table.

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3. Title 5 of the Administrative Code allows for 4 percent of the entering freshman class and 4 percent of the lower-division transfers who do not meet the regular academic requirements to be admitted under the category "exception admissions."

4. Educational Opportunity Programs 1973-74 Annual Report, the California State University and Colleges Office of the Chancellor, Division of Student Affairs, January 1975.

CALIFORNIA STATE UNIVERSITY AND COLLEGES
EDUCATIONAL OPPORTUNITY PROGRAM
AWARDS AND EXPENDITURES

	1972-73	1973-74	1974-75	1975-76	1976-77
Total, program costs	$3,630,868	$5,006,303	$5,005,179	$6,464,138	$10,182,138
Total, grant dollars	2,156,000	3,198,918	3,061,455	4,263,433	6,129,041
Total, administration and counseling	1,474,868	1,807,385	1,943,724	2,200,705	4,053,097
Number of grants	6,300	9,534	9,251	11,698	9,342
Number of 1st year grants	3,500	4,220	3,165	4,187	4,817
Number of 2nd year grants	2,800	2,898	3,117	3,679	1,888
Number of 3rd year grants	-	1,342	1,904	2,303	1,431
Number of 4th year grants	-	1,074	1,065	1,529	691
Number of 5th year grants	-	-	-	-	50
Average Dollar Grant					
1st year	$440	$462	$480	$525	-
2nd year	220	231	249	275	-
3rd year	-	240	258	275	-
4th year	-	240	258	275	-

The California Community Colleges' systemwide Extended Opportunity Programs and Services (EOPS) were created and funded under Chapter 1579, Statutes 1969 (SB 164) to provide support services and financial aid for deserving students. The amount of EOPS money allocated in 1969 totaled $2,870,000 and served 13,943 students.[5] This program has expanded to serve over 40,000 students with an annual State appropriation of $11.4 million. During the past two years (1974-1976), State funding for the program has approximately doubled. As with the State University, increasing emphasis is being placed on funding educational support services to increase the retention rate of EOPS students. In 1976-77, 40 percent of the EOPS dollars have been allocated for educational support, with 50 percent for financial aid. In 1972-73, the ratio was 30 percent and 60 percent respectively.[6] The historical pattern in the awards and expenditures of EOPS funds is summarized in the following table.

Equal Educational Opportunity Programs

In the three public segments, most of the access and retention services offered to women, low-income, and ethnic minority students are provided under the auspices of EOP/EOPS programs. There are EOP/EOPS programs serving the disadvantaged students at 99 of the California Community Colleges, all 19 campuses of the California State University and Colleges, and at all undergraduate campuses of the University of California.[7] With respect to ethnic minorities, 30 percent of all minority undergraduate students attending the University are EOP students.[8] In

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5. "EOPS Evaluations," Board of Governors of the California Community Colleges, April 9-10, 1975.

6. Approximately 10 percent of the total funds are utilized for administration and planning.

7. Access and Assistance: The Study of EOP/EOPS in California's Public Institutions of Higher Education, Evaluation and Training Institute, September 1976. These figures and the rest of the figures presented in the above paragraph are based upon Fall 1974 data.

8. This figure includes those students listed as "Central American/Latino" and "Other Non-Caucasian," in addition to those students identified as "Native American," Afro-American/Black," "Mexican-American/Chicano," and "Asian-American/Oriental." Omitting the students listed under the first two groups, the percent of ethnic minorities enrolled in EOP, as compared to the total University minority enrollment is 32 percent.

California Community Colleges
Extended Opportunity Programs and Services

	1972-73	1973-74	1974-75	1975-76	1976-77
Total number of students	19,800	25,083	23,917	27,149	40,724
Total EOPS dollars	$4,850,000	$6,170,500	$6,170,500	$7,654,879	$11,484,027
Average expenditure per student	245	246	258	282	282
Dollars for financial aid	$2,910,000	$3,578,890	$3,455,480	$4,466,081	$ 5,737,537
Average grant	207	204	173	228	228
Percent of total funds	60%	58%	56%	58.3%	50%
Dollars for administration	$ 485,000	$ 555,345	$ 555,345	$ 459,360	$ 1,039,830
Percent of total funds	10%	9%	9%	6%	9%
Dollars for education support	$1,455,000	$1,900,514	$2,034,175	$2,679,602	$ 4,637,75
Percent of total funds	30%	30.8%	33%	35%	40.4
Dollars for Planning & Special Projects	-	$ 135,000	$ 125,000	$ 49,836	$ 68,90
Percent of total funds	-	2.2%	2%	0.7%	0.6

the State University, EOP students account for 36 percent of the new undergraduate minority population. In contrast, in the Community Colleges EOPS students account for only 10 percent of the new minority student population.[9]

These figures assume greater significance when compared with those for total enrollments of Chicano/Latino and Black EOP/EOPS students. Black EOP/EOPS students comprise 15 percent of all Black Community College students, 58 percent of all Black State University students, and 47 percent of all Black University students. Correspondingly, Mexican-American/Chicano EOP/EOPS students comprise 10 percent of all Mexican-American/Chicanos attending the State University, and 50 percent of all Mexican-American/Chicanos attending the University.[10]

Of the 7,951 EOP students attending the University of California in 1974-75, 81 percent received financial aid. Of the 13,585 EOP students attending the California State University and Colleges, 47 percent received EOP grants. Although data are not directly comparable for the California Community Colleges, of the 36,777 EOPS students enrolled in 1974-75, 39 percent received State EOPS grants.

EOP/EOPS programs demonstrate greater success in recruiting women than the three segments as a whole. In 1974-75, EOP participants in the University of California included 47.3 percent females and 52.7 percent males, while the systemwide EOP enrollment at the California State University and Colleges was 49.6 percent female and 50.4 percent

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9. The figure presented for the State University includes those students listed as "Native American," "Afro-American/Black," "Spanish-surname," "Asian-American/Oriental," and "Other Non-Caucasian." Omitting those students listed under the category "Other Non-Caucasian," the percent of ethnic minorities newly enrolled in EOP, compared to total new undergraduate minority enrollment, remains at roughly 36 percent. The figure for the Community Colleges includes those students listed as "Native American," "American/Black," "Mexican-American/Chicano," and "Asian-American/Oriental."

10. Although the figures presented are significantly lower in all instances for the Community Colleges, it is important to note that Community Colleges traditionally enroll a higher percentage of ethnic students than do the other two segments. It must be further noted that the figures provided in this paragraph are based upon 44 Community Colleges, 10 State University campuses, and 6 University campuses providing ETI with such information.

male.[11] The EOPS program in the Community Colleges has maintained a similar record, with 58 percent of the EOPS students female, while the overall female enrollment in the system is 47.5 percent.[12]

The following discussion provides a sampling of the different kinds of access and support services primarily offered through EOP/EOPS to women, low-income, and ethnic minority students in the three public segments. The services listed below are not intended to provide a comprehensive list of all such segmental activities; rather, they reflect an effort to reduce emphasis on enrollment "quotas" in favor of a much-needed inventory and assessment of segmental affirmative action activities.

The California Community Colleges

New Opportunity Workshop

In conjunction with its recruitment and orientation activities, Chaffey College conducts an aggressive summer enrichment program, entitled New Opportunity Workshop (NOW). Designed for approximately 40 to 50 of the 350 students utilizing the College's EOPS services, the NOW Program runs for six weeks at no cost to the participants. The program strives to build the confidence of prospective students for successful participation in the academic process; it also strives to build their confidence in meeting the personal challenges and situations awaiting them once outside college. In addition to offering program counseling, preregistration, campus orientation, and classes in academic survival skills, the NOW program provides a number of cultural enrichment activities. These activities include trips to the theater, presentations by cultural groups, and a one-week camping retreat. In addition, the program director, through her excellent ties with the community, has arranged for routine health examinations and dental care.

Women's Re-Entry Educational Program

Utilizing funds acquired through Title I of the Federal Higher Education Act of 1972,[13] De Anza College initiated a program in 1972 designated to

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11. The total percent enrollment at the University in Fall 1974 was 41.1 percent female and 58.9 percent male. The total enrollment at the State University in Fall 1974 was 45.2 percent female and 54.8 percent male.

12. See: Access and Assistance: Study of Extended Opportunity Programs and Services in California Community Colleges, Ibid.

13. It is important to note that the WREP is not a program administered through EOPS. However, a discussion of WREP is included in this section as an example of equal educational opportunities offered in the three segments outside of EOP/EOPS.

meet the needs of "mature women." A guiding tenet of the Women's Re-Entry Educational Program (WREP) centers on the need for applying nontraditional approaches for the admission and retention of older, more mature women. The program attempts to deal with a wide variety of problems that normally confront the mature woman upon her re-entry into education. Such problems range from the student's lack of self-esteem to the institution's lack of specialized services and counseling to help overcome her self doubts. Features of the program include a central child-care facility and the scheduling of classes between 9 a.m. and 2 p.m. Owing to the specific target group, WREP candidates are accepted on the basis of such considerations as whether or not a woman is the head of the household and whether or not she is a a welfare recipient. Due to the initial success of the De Anza WREP, other Community Colleges have instituted similar re-entry programs. Since 1972, the various WREPs have provided services for over 400 women.

Special Support Project

Because of the rapid proliferation of new programs and services funded totally, or partially, through EOPS, Los Angeles City College is embarking upon an ambitious fourteen-month project to inventory and assess their effectiveness. The impetus for the Special Support Project stems from the need to provide greater accountability for EOPS activities in light of uncertain yearly funding patterns. A major goal of the project is to develop a sophisticated yet functional computer-based "Service Data System" to provide experiential and statistical data necessary to evaluate EOPS support services. The college hopes that once the data system is developed, information can be collected and processed routinely each time a student enlists the aid of one of the community service (i.e., EOPS) components. The collection of such data is designed to provide answers to questions concerning program duplication, effective use of financial resources, and the quality of the services provided. The key to the effectiveness of the project lies in the integration of computer-use capabilities.

Bus Transportation Program

A Los Angeles area Community College initiated a special Bus Transportation Program for EOPS students.[14] The program, in cooperation

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14. See Access and Assistance, Ibid. In order to ensure campus anonymity, ETI staff developed a code for site-visit campuses rather than reveal campus names where information was not provided by segmental offices or was not a matter of public record. The Bus Transportation Program was initiated by Community College D.

with the Southern California Rapid Transit District (SCRTD) strives to increase class attendance and tutorial participation. The SCRTD issues bus coupons which EOP staff distribute to students most able to benefit from the program. This innovative program merits attention in that it provides a unique service for EOPS students.

The California State University and Colleges

Recruitment

California State University at Long Beach has demonstrated a great deal of success in recruiting low-income, minority students.[15] The federally funded Upward Bound Program, currently incorporated into EOP activities, has made a considerable contribution to this success. Upward Bound programs are designed to prepare low-income high school students for college. Long Beach recruits 70 low-income, sophomore students from four local high schools to participate in Upward Bound activities during their last two years of high school. All of the students selected are those who would not normally consider attending college. Upward Bound at Long Beach consists of a six-week residential summer program, and a program during the academic year consisting of 26 Saturday meetings. In addition to providing pre-college preparation and counseling, the program works to instill within the participants a much needed sense of motivation to attend and ultimately succeed at college. Since the establishment of Upward Bound at Long Beach, over 80 percent of the students selected to participate have attended postsecondary institutions.

In a twelve-month period beginning in Fall 1974, the Long Beach campus experienced a 30 percent increase in the recruitment and admission of Chicano/Latino EOP students. This increase is mainly attributed to a concentrated program whereby recruiter-counselors are assigned to target high schools with a high Chicano enrollment. Over a four- to six-week period, working three days per week, the counselors provide information about the Long Beach campus. More important, however, is the assistance they provide in completing admissions and financial aid applications, submitting transcripts, and scheduling entrance exams. Such services are neither glamorous nor necessarily innovative, yet as the 30 percent increase of Spanish-surnamed students at the Long Beach campus indicates, they are quite effective.

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15. The statement is based upon a Commission staff site visit and a State University report entitled Student Development Programs, California State University, Long Beach, Five-Year Subsector Planning Report, February 1974.

EOP Summer Program

State University Campus A offers a five-week summer institute for approximately 40 incoming EOP students.[16] All participants must take two of three courses offered, choosing among "American Writing and Dialect," "Principles of Sociology," and "Minority Politics." Each course is given two and one-half hours per day, five days per week. Upon successful completion of the courses, seven units of college credit are awarded. The advantages to the student are obvious: they obtain a crucial "head start" in acquiring a four-year degree, as well as the opportunity to experience the academic life in a supportive and corrective environment.

Tutoring

Campus A's tutoring component is also cited in the ETI report. The tutoring component consists of one professional in charge of 47 peer tutors, each with a comfortable case load of from one to three students. The tutors offer academic help for classes given in 26 of the college's departments. EOP tutors at Campus A are junior, senior, or graduate students recruited through the departments. They are required to have a grade point average of 2.8 or higher. Before being allowed to tutor, they must participate in a workshop designed to increase their effectiveness. After a period of time, the effectiveness of the tutors is evaluated by their fellow peers and by the tutees themselves.

Disadvantaged Students Committee

To develop better lines of communication, State University Campus D has developed a Disadvantaged Students Committee.[17] The Committee, a subcommittee of the Educational Policy Commission of the Academic Senate, is composed of faculty members, students, and administrators. The primary purpose of the Committee is to advise EOP staff on faculty-student matters. Based upon ETI's appraisal, the Committee has provided for "good lines of communication and mutual respect" between and among the parties involved. Given the often-strained relationship between faculty members and EOP staff/students, the Disadvantaged Students Committee, if created on other campuses, might do much to ameliorate such tensions.

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16. This school was identified as State University and College Campus A by the ETI report entitled Access and Assistance. The same institution is discussed by the following paragraph entitled "Tutoring."

17. The school was identified as State University and College Campus D by the ETI report entitled Access and Assistance.

Student Handbook for Low-Income and Minority Students

Based upon the simple idea of providing information geared for low-income and minority students, the Intercultural Education and Resources Center (IERC) on the Hayward campus has published the IERC Student Handbook. The Handbook is relatively easy to read and provides information about the campus and the "university experience" in general. The Handbook also offers a summary of the major points in the student catalog. Of perhaps greater import, the Handbook offers advice on how to develop effective study methods, write effective papers, take examinations, and generally how to "survive" in college.

The University of California

The University of California has several special summer and weekend academic-support programs for minority or disadvantaged students.[18] A few of these programs are summarized below.

Summer Bridge

The Berkeley campus maintains a summer bridge program to aid incoming EOP students assimilate to the campus and increase their chances for academic success. Students enroll in a course for regular academic credit, thereby easing their course load during the initial academic year. Students can also obtain academic counseling and assistance in developing study habits and other learning skills.

Upward Bound

Since 1966, the University's Los Angeles campus has maintained a pre-college preparatory program to assist participants in placement and continuation in postsecondary education. The target population for the Upward Bound Program are students from low-income, racially imbalanced, high-unemployment areas in Los Angeles. The program includes academic workshops and classes to supplement secondary skills, as well as cultural and enrichment programs to broaden the students' outlook and social development. The summer residential component concentrates on additional academic courses, transitional problems of students new to the University, work experience programs, and cultural and recreational activities.

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18. See: "A Catalog of Special Summer and Weekend Academic Support Programs for Minority or Disadvantaged Students," University of California, November 1976.

Summer Outreach Program

The Student Affirmative Action-Summer Outreach Program at the University's Riverside campus is a six-week residential series of workshops in English, mathematics, and reading and study skills. The program also includes academic advising and tutorial sessions, as well as basic orientation services. Participants are housed in campus residence halls along with student counselors in order to assist the incoming freshmen with their adjustments to University life.

Special Transitional Enrichment Program

The Davis campus began a Special Transitional Enrichment Program (STEP) in 1969 to assist new special-action students in developing academic skills that would enhance their probability for success in the University. STEP is a two-part program utilizing a four-week summer series of diagnostic and remedial services. EOP staff members provide personal and academic counseling, and specialists from the campus Learning Center diagnose the student's reading, writing, and study skills. Learning Center staff then provide necessary assistance in overcoming any weaknesses. This is done in both group sessions, and individual consultations.

STEP's second component is a program of math/science and English courses which operate during the regular academic year. All special-action students, both freshman and transfer, are eligible to participate, with approximately 160 students doing so in 1975-76.

Problems To Be Resolved

Certainly, little doubt can be expressed concerning segmental commitment to increase participation for ethnic minorities, women, and low-income groups over the past decade. However, the numerous problems still confronting affirmative action programs provide the best argument for a continued segmental and State commitment to equal educational opportunity. The following is a brief discussion of the kinds of problems still confronting California postsecondary education as it embarks upon a second decade of student affirmative action.

1. An interest has been expressed in all three public segments to "institutionalize" or decentralize EOP/EOPS throughout the State. This relatively new phenomenon contrasts with the early development of EOP/EOPS, in which resistance to total "assimilation on the part of EOP/EOPS staff and a less than

total commitment on the part of (campus and segmental) administrators and faculty led to relatively autonomous EOP/EOPS."[19]

The issue of institutionalization takes on a number of patterns, both on a segment-by-segment and a campus-by-campus basis. Proponents of institutionalization argue that due to an increasing need for similar support services among all students, EOP/EOPS should be geographically decentralized and made readily accessible to the general student population on each campus. Institutionalization of EOP/EOPS is also believed to be more efficient and more economical than separate programs, given the present "era of limits." Advocates further contend that many of the smaller campuses with both a lower general and ethnic enrollment do not need and cannot afford the luxury of specialized programs for a few members of specific groups. Finally, because of past tensions between EOP/EOPS staff and campus administrators, it is believed by some that decentralization limits the likelihood of EOP/EOPS becoming "power centers."

From the perspective of many EOP/EOPS staff and students, institutionalization fails to acknowledge particular cultural idiosyncracies and needs. It is thus contended that institutionalization fails to incorporate and account for services peculiar to traditionally underrepresented groups. Many EOP/EOPS staff also feel that institutionalization results in a loss of direct communication between fellow staff members, owing to geographic decentralization of EOP/EOPS services.

2. The attempt to overcome barriers to access and retention by overcoming "unmet" financial need continues to burden public postsecondary education in California. A major part of the problem stems from the difficulty of determining the extent of unmet need. Although such documents as the ETI study, Access and Assistance, and the Student Aid Commission's Student Resource Survey Number 2 have provided insight into the issue of unmet need, the actual extent of this problem remains unknown due to difficulties in assessing (1) the unmet need of students already attending postsecondary institutions,

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19. The Evaluation and Training Institute (ETI) noted that: "Institutionalization refers most often to the practice of making what originally were uniquely EOP/EOPS services such as counseling, advising, and admissions and financial aid processes, congruent with those available to other institutions." Access and Assistance, op.cit., p. 16.

and (2) the unmet need of potential students who, because of pressing financial problems never consider college a viable alternative.

3. The issue of effectively evaluating affirmative action programs remains a crucial problem. At both the campus/segmental level and the State level, considerable time and effort have been spent over the past decade analyzing programs such as EOP/EOPS. However as noted by ETI:

> The bulk of the data consists of numbers which describe the services--what services are available, how many students are served, and so forth. The lack of substantive data on which to evaluate the effectiveness of the services is appalling.[20]

The report also states that:

> All campuses in each segment have available to EOP/EOPS students tutoring and counseling. No one seems to question whether and in what combination these students need tutoring and counseling; these are the two traditional remedies, and as such are often accepted as given. The assumption is made that EOP/EOPS students need counseling and that all counseling is good. Not a shred of evidence exists concerning the impact of counseling generally or the different types of counseling specifically.[21]

The present absence of effective means of evaluating affirmative action programs is partially a result of the emphasis on quantitative evaluation in an area which requires a consideration of the quality of services and their resulting impact on the student. As implied in the above quotations, the shortcoming of past evaluations has been the failure to ask the qualitative questions. The emphasis must be changed from a simple consideration of the number of students served to a consideration of the impact these programs have on the student eligible to make use of the services.[22]

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20. Evaluation and Training Institute, Ibid., p. 288.

21. Evaluation and Training Institute, Ibid., p. 288.

22. The Commission's Student Affirmative Action Plan Outline attempts to incorporate qualitative considerations in addition to asking the segments to provide the usual quantitative information. While basically asking for a segmental inventory of affirmative action programs and activities, the Outline also asks for the development of both staff and student appraisals of outreach and support services as a means of beginning to determine the actual impact of affirmative action activities.

4. In response to the Legislature's hearings on the Bakke case, conducted in March 1977, the University of California prepared a statement describing equal educational activities and programs at the graduate and professional school level.[23] According to the University's response, all three of its law schools offer tutoring programs. However, staff and faculty support for tutorial activities within the law schools varies substantially. For example, faculty members at the UCLA Law School are expected to meet with students in the Legal Educational Opportunity Program (LEOP) on a weekly or biweekly basis for tutorial sessions. In contrast, the Davis Law School program depends on the voluntary participation of second- and third-year law students for its tutorial services.[24] While such activity on the part of law students is commendable, tutorial programs which receive faculty support have a very positive effect, as demonstrated by the UCLA experience. In 1974, faculty tutorial efforts helped 70 percent of UCLA's graduating LEOP students pass the California Bar Examination on their first try. In contrast, only 9 percent of the 1970 LEOP graduates passed the exam on their first try.

   Of the University of California's five medical schools, only those at the San Diego and UCLA campuses have tutoring programs. The UCLA medical school sponsors a $20,000 six-week tutorial program for 24 students. The program at San Diego is much more modest, sponsored by a $5,000 HEW grant. Unfortunately, both these programs stress summer tutorial services.

   Tutorial services throughout the entire academic year are needed at both of these campuses to aid ethnic-minority and women students in meeting the challenge of medical school. At the University's three other medical schools, which do not provide tutorial services (Irvine, Davis, San Francisco), ethnic-minority and women students would benefit greatly from this kind of assistance.

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23. See the University of California's "Response to the Vasconcellos Bakke Hearings, conducted by the Joint Subcommittee on Postsecondary Education, March 2, 1977."

24. For the academic year, 1977-78, the Davis Law School has provided $20,000 for a comprehensive tutorial program. However, based upon the University response, the extent of faculty and staff participation is not clear.

Although the University's three law schools provide varying degrees of tutorial services for ethnic minorities and women they do not provide special counseling services for these students. The same situation is true at all five of the University's medical schools. Counseling services are vitally important to many ethnic minority and women students, who must cope with a rigorous academic program and a paucity of successful role models in an often alien and indifferent environment. The presence of an understanding and assuring counselor could potentially mean the difference between dropping out or staying in school.

As the University continues to plan for and explore effective affirmative action activities, it is crucial that it assume the responsibility for providing tutorial and counseling services to students, at both the undergraduate and graduate/professional levels.

5. In addition to the above concerns, a whole range of problems still needs to be addressed more adequately by the State and the three segments. While the political activity of the sixties led to affirmative action programs striving toward the goal of equal educational opportunity, a recent awareness of sub-groups within these traditionally underrepresented groups has become manifest. As indicated earlier in this section, a need exists to include older, more mature minorities, women, and low-income people as target groups for affirmative action access and retention efforts. The same holds true for groups such as migrant farm workers. While the federally funded College Assistance Migrant Program has begun to address problems of this particular group, the segments and the State need to begin taking a more active role in this area. Finally, as the part-time student receives greater attention within the whole postsecondary context, it is essential that he/she be identified as a recipient of affirmative action access and retention services. For example, EOP/EOPS programs need to acknowledge, more so than they presently do, that many of their participants have families to support and jobs to maintain.

While California's public postsecondary institutions can be lauded for the many advances made in the area of student affirmative action over the past decade, much more needs to be done. The old obstacles and barriers have not yet been successfully eliminated, and the newly articulated ones require an even more cooperative effort on the part of the State and the public segments.

VII. THE BAKKE DECISION AND EQUAL EDUCATIONAL OPPORTUNITY

In light of the recent California Supreme Court ruling in Bakke v. Board of Regents of the University of California, the status of student affirmative action programs is unclear. In its decision, the Court held that the University of California at Davis Medical School violated Allan Bakke's rights by denying him admission to the School as a consequence of preferential treatment afforded to minority applicants.[1] Of the one hundred spaces available to medical school applicants during each of the academic years 1973-74 and 1974-75, up to sixteen were designated for qualified students admitted through a special program. The Court made the following finding:

> We conclude that the program as administered by the University, violates the constitutional rights of non-minority applicants because it affords preference on the basis of race to persons who, by the University's own standards, are not as qualified for the study of medicine as non-minority applicants denied admission.

In response to an appeal by the Regents of the University, the United States Supreme Court has agreed to review the Bakke case in the Fall of 1977.[2] The California Court ruling will be held in abeyance until final disposition of the case, as a result of a petition by the University of California.

The Position of the University Concerning Bakke

Arguing before the California Supreme Court, University counsel contended that Davis' special admissions program aids in the integration of the Davis Medical School and of the medical profession as a whole. Such integration, counsel argued, is deemed necessary in order to provide: diversity within the student body; a chance for minorities to educate the rest of the student body (concerning the medical needs of

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1. See: Bakke v. Board of Regents of the University of California, Supreme Court of California, 18 C, 3d 34, 132 Cal. Rptr. 680, 553 P. 2d 1152.

2. Following the California Supreme Court decision, the University petitioned for a rehearing. The petition was denied on October 28, 1976, by the California Supreme Court. The University then applied for a stay of the California decision. The University was granted a thirty day stay, pending the filing of a petition for a writ of certiorari (i.e., a petition for hearing). The petition was filed and on February 22, 1977, certiorari was granted.

minority communities); and role models for minority communities. A second motivating factor involves the assumption that the special admissions programs will ultimately result in improved medical care for minority communities. From the University's viewpoint, improved medical care for minority communities will stem from an increase in the number of doctors willing to serve minority communities, produce a better rapport between minority doctors and patients from similar backgrounds and cultures, and generate greater interest in treating diseases common to minorities.[3]

The Decision of the California Supreme Court

The California Supreme Court decision focused upon three critical points. First, the Court reiterated an earlier interpretation of the Fourteenth

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3. Donald L. Reidhaar, University General Counsel, has written that

> . . . the compelling state interest, as perceived by the University, in having race-conscious special admissions programs for the professional schools and particularly the schools of medicine and law at this point in the history of our state and nation is: the effective integration of the schools and the professions, the correction of the gross underrepresentation of minorities in the professions, and the more adequate provision of professional services to all segments of society, especially underserved minority communities. Subsumed within these broad interests are a number of specific objectives including: the destruction of racial stereotypes incident to the scarcity of minorities in the professions, the provision of role models to demonstrate to minority youth that they can aspire to professional careers, the creation of a racially diverse student body, the promotion of interaction between minority and nonminority professional students and practitioners, the heightening of concern for the more adequate provision of services to those most in need of them including minority communities, and better preparing all professional students--minority and nonminority--to more effectively serve as informed and responsive members of a pluralistic society. (Donald L. Reidhaar, in a letter to Bruce D. Hamlett, dated May 25, 1977.)

Amendment by Justice Douglas of the United States Supreme Court in a dissenting opinion rendered in a similar case:[4]

> The Equal Protection Clause [of the Fourteenth Amendment] commands the elimination of racial barriers, not their creation in order to satisfy their theory as to how society ought to be organized.[5]

Second, the Court cited a lack of empirical evidence presented by the University to substantiate its claim that improved medical care would result from special admissions programs based on race. Finally, the Court found that the University did not meet the burden of proof to show that its methods were necessary to meet both the University's and the State's educational interests and objectives.

The Position of Minority Interest Groups Concerning Bakke After the California Decision

Concerned minority-interest groups attempted to persuade the Regents not to appeal the Bakke decision to the United States Supreme Court.[6] In arguing this position, the Mexican American Legal Defense and Educational Fund (MALDEF) and the National La Raza Lawyers' Association (NLRLA) offered three reasons:

1. As noted by the California Supreme Court, University counsel had failed to place on the record supporting evidence to justify the special admissions program at the University of California Davis Medical School;

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4. Bakke is merely the most recent and noteworthy case of this type brought against various universities throughout the country. The case alluded to here is the Marco DeFunis, Jr., v. Odegaard case, decided by the United States Supreme Court on April 23, 1974. The DeFunis case involved a white prospective law student denied admission to the University of Washington Law School under similar circumstances as was Bakke. The Court, however, declared the case moot; by the time it was to be decided, DeFunis had been admitted to law school, and was in his third year.

5. Marco DeFunis, Jr., v. Odegaard, (416 U.S. at p. 342.) (40 L. Ed. 2d at p. 183.)

6. However, one minority-interest group, the Western Regional Office of the National Association for the Advancement of Colored People (NAACP), encouraged the Regents to appeal the case.

2. Given this act of omission and the present composition of the United States Supreme Court, the fear was expressed that the Bakke decision had little chance of being reversed. More importantly, it was argued that the possibility existed that the United States Supreme Court would expand the California decision nationwide, further weakening the effectiveness of special admissions programs for the recruitment of minorities.

3. Despite the restrictive nature of the California Supreme Court decision, effective admissions programs for the recruitment of ethnic minorities are still possible within the parameters outlined by the Court.[7]

After failing to convince the Regents that an appeal would not be in the best interests of ethnic minorities, concerned groups filed a "brief of amici curiae" requesting that the United States Supreme Court reject the appeal by the University.[8] The groups presented a twofold justification for their request. First, as cited in the brief, the "case and controversy" clause of Article III of the United States Constitution requires that a plaintiff show personal injury which can be remedied only by a favorable court decision. Based upon University testimony, the record clearly established that Bakke would have been rejected by the Davis Medical School even if a special admissions program were not in existence.

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7. See: the "Statement of the Mexican American Legal Defense and Educational Fund and the National La Raza Lawyers' Association" in The Bakke Decision: the Question of Chicano Access to Higher Education, edited by Carlos Manuel Haro, Chicano Studies Center Document, No. 4, UCLA, Los Angeles (1976), p. 36.

8. See: Brief of Amici Curiae in the Supreme Court of the United States, October Term, 1976. No. 76-811. The brief was filed for the following groups: the National Urban League; the National Organization for Women (NOW); the United Automobile, Aerospace, and Agricultural Implement Workers of America (UAW); the National Conference of Black Lawyers; the La Raza National Lawyers' Association; the Mexican American Legal Defense and Educational Fund; the Puerto Rican Legal Defense and Educational Fund; California Rural Legal Assistance, Inc.; the National Bar Association; UCLA Black Alumni Association; the National Federation of Women's Organizations; UC Davis Law School; Chicano Alumni Association; the Charles Houston Bar Association; the National Lawyers Guild; La Raza National Law Students Association; and the Black American Law Student Association.

Bakke, therefore, was not "within the class of persons affected by the policy" which he sought to challenge.[9]

The second justification for rejecting the University's appeal centered upon the "sparse record" presented by University counsel. The brief contended that despite the monumental constitutional issues involved, Bakke is not the case upon which these issues should be decided. In defense of the special admissions program, MALDEF contended that the University presented only an eleven-page deposition by the Chairman of the Admissions Committee. The Chairman's statement lacked concrete evidence to support the objectives of and necessity for the Davis special admissions program. If University counsel had handled the case properly, the brief argued, the record would have included evidence concerning the racially biased nature of the Medical School Admissions Test, as well as evidence demonstrating that the whole educational system in the State of California discriminates (either by design or by accident) against minority students, thereby depriving them of an equal opportunity to gain admission to medical school.[10] Pointing to the "paucity" of the record, the brief urged the court to withhold judgment on the issues involved until "a case where a spirited conflict between the parties has resulted in a fully developed record upon which to base such an important decision."[11]

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9. The brief of amici curiae stated that in doing so "the University essentially gave up an air tight case in order to confer 'jurisdiction' on this Court so that it could achieve its goal of obtaining 'the most authoritative decision possible.'" (Brief of Amici Curiae, p. 16.) The brief also noted that the Dean of Admissions at the University of California at Davis Medical School stated that, in 1974, Bakke did not even "come close to admission" and, in 1973, his application was not received until "quite late," after a substantial number of the positions were already filled.

10. With respect to the lack of evidence noted in the latter concern, the recent California Supreme Court ruling Serrano v. Priest, L.A. 30398, exemplifies a very tangible example of discriminatory practices in California's educational system. On December 30, 1976, the California Supreme Court ruled that the present public school financing system in California is unconstitutional because it denies equal protection under the law to elementary and secondary students. This current policy undoubtedly provides better educational opportunities for students from the wealthier school districts.

11. Brief of Amici Curiae, op. cit., p. 6.

To further substantiate the lack of confidence in the University's ability to properly handle the Bakke case, the brief provided, in a lengthy footnote, a summary of correspondence between Bakke and the Assistant to the Dean of Admissions of the Davis Medical School after Bakke's application had been rejected in 1973. According to this correspondence, the Assistant to the Dean provided Bakke with information and advice for opposing Davis' special admissions program.[12]

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12. The brief argues that

> . . . there are indications predating the filing of this action that the University's primary aim was to "set the stage" for a judicial determination of the validity of its Task Force program.
>
> In the summer of 1973, following his first denial, Mr. Bakke entered into an exchange of correspondence with the Admissions Office of the Davis Medical School. In the first of three letters, between Bakke and Assistant to the Dean of Admissions, Peter C. Storandt, Storandt expressed sympathy for Bakke's position. Further, he urged that Bakke "review carefully" the Washington Supreme Court's opinion in DeFunis, sent him a summary of the opinion, urged that he contact two professors known to be knowledgeable in medical jurisprudence (CT. 264-65), recommended that he contact an attorney and concluded with the "hope that . . . you will consider your next actions soon" (CT. 265).
>
> Two weeks later, Bakke met with Storandt at the Davis Medical School (CT. 268); and 3 days later Bakke wrote to Storandt as follows:
>
> > Thank you for taking time to meet with me last Friday afternoon. Our discussion was very helpful to me in considering possible courses of action. I appreciate your professional interest in the question of the moral and legal propriety of quotas and preferential admissions policies; even more impressive to me was your real concern about the effect of admission policies on each individual applicant.
> >
> > You already know, from our meeting and previous correspondence, that my first concern is to be allowed to study medicine, and that challenging the concept of racial quotas is secondary. Although medical school admission is important to me personally, clarification and resolution of the quota issue is unquestionably a more significant goal because of its direct impact on all applicants. (CT. 268; App. A)

University Response to the Minority-Interest Groups

In response to the minority-interest groups, the Regents of the University filed a "Reply to Brief of Amicus Curiae," which presented three major counterarguments:[13]

1. Allan Bakke was so close to being admitted to the Davis Medical School that the University could not determine whether he would have been admitted in the absence of a special admissions program. This judgment was based on Bakke's excellent credentials (overall criteria including high admissions-test scores and grade-point average) and the complexities of the admissions process.

   In opposition to assertions by minority-interest groups, the University further held that it had never changed its position with respect to this issue. Throughout the course of the case in the California courts, the University asserted that "Bakke properly bore the burden on his likelihood of admission." However, when the California Supreme Court

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Bakke's letter then went on to outline his alternative litigation strategies (CT. 268-69) consisting of "Plan A" and "Plan B." Storandt promptly replied. After remarking that, "the eventual result of your next actions will be of significance to many present and future medical school applicants" (CT. 266), he went on to suggest the use of "Plan B" over "Plan A":

> I am unclear about the basis for a suit under your Plan A. Without the thrust of a current application for admission at Stanford, I wonder on what basis you could develop a case as plaintiff; if successful, what would the practical result of your suit amount to? With this reservation in mind, in addition to my sympathy with the financial exigencies you cite, I prefer your Plan B, with the proviso that you press the suit--even if admitted--at the institution of your choice. And there Stanford appears to have a challengeable pronouncement. If you are simultaneously admitted at Davis under EDR [Early Decision Program], you would have the security of starting here in twelve more months (CT. 266). Ibid., pp. 16-18.

Assistant Dean Storandt was not acting on behalf of the University, and he was acting contrary to University policy. He is no longer employed by the University.

13. "Reply to Brief of Amicus Curiae in Opposition to Certiorari," in the Supreme Court of the United States, October Term, 1976, No. 76-811.

ruled that the University had the burden of proof, University counsel stipulated that the burden of determining Bakke's admission status could not be met.

2. In reference to the minority-interest groups' criticisms of the "inadequate" record presented by the University, its counsel noted that none of the criticisms offered disputed the facts set forth in the University's petition. University counsel has since stated that the University presented its case before the courts with all supporting evidence completely uncontradicted. Such evidence included, in addition to the deposition of the Chairman of the Admissions Committee and the Associate Dean of Admissions, Davis Medical School, "extensive statistical data of the medical school." Accordingly, the University dismissed the facts alleged by the minority-interest groups as being critical to the success of the University's case.

   The University described societal and institutional discrimination as being "common knowledge" subject to "judicial notice" for the determination of Bakke. As an example, the University acknowledged that de jure segregation in California's public schools has been formally recognized by the State and federal courts. However, the University argued that past discrimination has not been practiced by the Davis Medical School. Throughout most of the school's history it has had a special admissions program. While the minority groups argued the need to expose past discrimination on the part of the University system, its counsel again argued that such an approach lacked historical evidence for verification. In support of this assertion, the University referred to its on-going voluntary efforts to combat effects of societal discrimination.

3. The most important argument in the University's reply was the clear statement of disagreement with the California State Supreme Court that it is possible to achieve racially oriented results without utilizing racially oriented means. The University's position is that

   > . . . where there are many more qualified applicants than there are places available, race-conscious programs are essential in order to enroll substantial numbers of minorities, and particularly Blacks and Chicanos, in the University's medical and law schools. A special admissions program based upon disadvantage is not an effective alternative. A disadvantaged program, if honestly administered, would result in the admission of many non-minority applicants and

> that would accomplish nothing in terms of promoting the basic objective of integration and racial diversity in the student body. Also, a disadvantaged program would screen out promising minority applicants coming from middle class families. In short, the problem of gross underrepresentation of minorities in the professions is a race problem. It can be effectively addressed only by race-conscious remedial measures.[14]

Special Admissions Alternatives Suggested by the Court

In addition to ruling that the special admissions program of the Davis Medical School was unconstitutional, the California Supreme Court suggested four alternatives the University could use without impinging upon the rights of non-minority students. The first entailed a modification of regular admissions standards. The Court declared it was aware of "no rule of law" requiring the University to use only grade-point averages and test scores in determining the admissibility of prospective students. The Court made clear that its intention was not to compel the University to utilize exclusively "the highest academic credentials" in determining admission. The Court reminded the University that low grades and test scores do not necessarily reflect the abilities of some disadvantaged students. In addition, the Court acknowledged that, although disadvantaged students generally have lower grades and test scores, they often demonstrate an equal or even greater ability to achieve their chosen educational and career objectives than an applicant with higher grades and a more fortuitous background.

The second alternative encompassed a modification of the special admissions program. While the Court opposed preferential treatment based upon race, it did not oppose preferential treatment for "disadvantaged applicants" of all races. The term "disadvantaged applicants" can be viewed as applying, for example, to those applicants demonstrating economic and/or educational hardship.

The third alternative involved increased recruiting activities and remedial schooling. The Court suggested that the

> . . . University might increase minority enrollment by instituting aggressive programs to identify, recruit, and provide remedial schooling for disadvantaged students of all races who are interested in pursuing a medical career and have an evident talent for doing so.[15]

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14. Donald L. Reidhaar, in a letter to Bruce D. Hamlett, dated May 25, 1977.

15. Bakke, op. cit., p. 32.

The fourth alternative focused on increasing the number of spaces available to medical school applicants, either by allowing additional students to enroll in existing schools, or by increasing the number of schools.

Disadvantaged Criteria for Special Admissions Programs

While a study of the proposed Court alternatives by a committee at Berkeley's Boalt Hall School of Law includes that the use of "disadvantagement" criteria will result in lower minority-admission levels, the committee's own "disadvantagement" models did not use all the variables that might be used under such an approach.[16] For example, in addition to the criteria utilized in the committee's first model (i.e., economic deprivation, cultural and/or educational deprivation, disadvantagement in language skills, a substantial work burden), Peter D. Roos, Director of Educational Litigation for MALDEF, has suggested the use of four other specific disadvantagement criteria in determining special admissions eligibility: (1) whether or not parents have completed college or high school; (2) whether the applicant has had to overcome the problem of being educated in a barrio or segregated school; (3) whether the applicant has had to provide support for himself and/or members of his family during his/her school years; and (4) whether or not the applicant is the product of a broken home.[17]

As further noted by Mr. Roos, despite it being virtually impossible to predict how the United States Supreme Court will rule with regard to Bakke, the use of racial or ethnic background as one of several criteria for admission to graduate and/or professional schools appears to be consistent with the California Supreme Court's ruling:

> We would emphasize, however, that nowhere in the decision is a holding or even an implication that a special admissions program cannot give weight to minority status as one element in evaluating the relative disadvantage of applicants.[18]

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16. See: "Report on Special Admissions at Boalt Hall After Bakke," October 5, 1976.

17. See: "The Bakke Decision--Its Implications and a Proposed Legislative Response," Peter D. Roos, Director, Educational Litigation, Mexican American Legal Defense and Educational Fund, March 2, 1977. It is important to note that the impact the above criteria might have upon ethnic enrollment levels has not been determined. However, they do represent avenues to be explored in anticipation of a U.S. Supreme Court decision unfavorable to the University.

18. Ibid., p. 2.

Another consideration left open to the University but not addressed in the Boalt Hall report involves the construction of special admissions programs on the basis of the State's manpower needs. Mr. Roos noted that specific problems and/or needs of minority groups requiring special skills usually found in members of the same group are reason enough for special admission. The following are three skills needed by the State which are most likely to be possessed by minority applicants: (1) the ability to speak a language other than English; (2) a demonstrated commitment to work within and serve minority communities; (3) an understanding of the folkways and culture of minority communities.

As previously noted, the University's position is that a special admissions program based upon "disadvantagement," as described in the preceding paragraphs, will not be an effective alternative to racially oriented admissions criteria. Since the problem of underrepresentation of minorities in the medical and legal professions is a racial problem, the University has argued, it can be effectively addressed only by race oriented remedial measures.

University President David S. Saxon has formed a University Task Force on Graduate and Professional Admissions with the charge to develop "general University-wide guidelines for graduate and professional schools admissions." In doing so, the Task Force was to "insure the intrinsic fairness of the admission process and provide the campuses with guidelines in the area of minority student access." The Task Force held its first meeting on February 9, 1977, and is expected to file a report to President Saxon by July 1, 1977.

As the situation presently stands, special admissions programs utilizing race or ethnic origin as a criterion for eligibility are still permissible pending the United States Supreme Court's ruling on Bakke. In a statement issued to the Chancellors of the nine University campuses and to the press on February 22, 1977, President Saxon noted that the Court will probably begin hearing oral arguments in October of this year and a decision will ensue sometime thereafter.

The California State University and Colleges has stated that the Bakke decision is not expected to affect its existing programs in admissions, EOP, and financial aid. Since

> CSUC has not established such [racial] quotas and has based special admission on being economically disadvantaged rather than being a member of a racial minority, we anticipate that it will not be necessary to alter current policies.[19]

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19. Memo from David Kagan, State University Dean, to Dean of Students re: The Bakke Decision and the California State University and Colleges, dated January 7, 1977. See Appendix Z.

In a similar statement, University of California President Saxon announced that

> . . . the Bakke case does not affect our regular undergraduate admissions process, because the University's requirements for regular undergraduate admissions contain no race conscious aspects.

President Saxon also added the important statement that

> . . . the potential impact of the Bakke case on special undergraduate admissions programs is still uncertain. If admission decisions in such programs are based on racial considerations, these programs may be affected. Please note that, in any event, no change whatsoever is required before the case is finally settled.[20]

The final outcome of Bakke is of great importance to the development of a statewide student affirmative action plan for public postsecondary education. The Postsecondary Education Commission unequivocally supports all legal programs and policies designed to increase the degree of representation for minorities in postsecondary education and in related professional fields. The Commission will continue to work cooperatively with the segments for the attainment of the goals articulated in ACR 151.

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20. Memo from David S. Saxon, President, University of California, to Chancellors, dated April 13, 1977.

VIII. PLANNING FOR EQUAL EDUCATIONAL OPPORTUNITY

To overcome the many barriers to quality education for all potential students, as well as to respond effectively to the Legislature's request for expanded educational opportunity, it is essential that a consolidated statewide plan for affirmative action be developed cooperatively by all segments of public postsecondary education. Increased educational access for ethnic minorities and women requires coordinated efforts by the three public segments, as well as the State Department of Education. Greater success for women and minorities in completing academic programs in a timely fashion requires that the segments share information and ideas between their effective programs. The Commission will continue to provide leadership in this effort.

The three public segments were requested through Assembly Concurrent Resolution 151 to prepare student affirmative action plans. Commission staff has worked with segmental staffs to prepare a model outline for their use in preparing reports pursuant to ACR 151.[1] The segments have been requested to submit detailed student affirmative action plans to the Commission by August 1, 1977. The Commission will integrate and transmit these plans to the Legislature before January 1, 1978.

In preparing these plans, the segments should address the following issues:

1. Which groups are underrepresented within each campus, within each segment?

2. What barriers cause this underrepresentation? The segments should consider barriers both within and outside the institutions.

3. Which barriers are within the direct purview of the segment to address--for example, faculty attitudes regarding minority enrollment? What corrective steps should be taken?

4. Which barriers are not within the direct purview of the segment to address--for example, inadequate high school preparation for low-income students? What corrective steps should be taken?

5. What are the needs of low-income, ethnic minority, and women students; how are the institutions now responding to those needs? In which areas have the institutions successfully met these needs, in which areas is greater effort needed?

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1. The proposed student affirmative action plan outline is included in Appendix F. The outline is summarized in the discussion below.

6. Within the past five years there has been a 150 percent increase in State funding for programs to assist low-income students.

   Most of this increase has occurred within the past two years. Is there enough money now available for aid and services for low-income students; are the right types of aid being provided?

The segmental planning effort should also include the development of the following information and recommendations:

1. An inventory of all present outreach and support service programs including, as a minimum, the following information about each program: purposes; clientele (target population, number of participants, criteria for selection); services provided; financing (annual cost, major source of funds, distribution of funds, cost to student).

2. A plan and schedule for implementing similar outreach and support service programs on campuses where needed and appropriate.

3. Provisions for periodic review and evaluation of these programs.

4. Applicability of admissions criteria which are broader than standardized test scores and high school grade-point average to evaluate the academic potential of students.[2]

5. An inventory of all programs which seek to sensitize administrative and teaching staff to the problems of underrepresented students and/or to promote a more effective academic program for low-income, ethnic-minority, and women students.

6. A plan and schedule for implementing similar institutional/professional involvement programs on campuses where needed.

7. Budget and cost estimates for all current and proposed activities.

The segmental plans should include a specific statement of goals, and a proposed timetable for their achievement. Responsibility for implementing the programs and achieving the goals should be specifically

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2. This recommendation does not apply to the California Community Colleges.

assigned, and those responsible held accountable.[3] Wherever possible, student representatives should be included in evaluating, designing, and implementing programs.

In addition to efforts by each segment to develop a systemwide plan, the implementation of an effective student affirmative action program requires cooperative efforts by the public segments, independent institutions, and Commission staff in three areas:

1. The development of methods for evaluating the effectiveness of the various outreach, support service, and institutional/professional development programs. It is essential to be able to identify programs which are particularly successful, as well as the causes for this success.

2. The assessment of the implications of State and federal financial aid policies for student affirmative action. Staff from the Student Aid Commission should be included in this assessment.

3. The identification of effective programs which have potential application in the public institutions. Commission staff, in cooperation with staff from the public institutions, should study a sampling of outreach, support service, and institutional/professional involvement programs in independent institutions. Where appropriate, these programs should be adapted to the needs of public institutions. Similar programs offered by private organizations (such as the League of United Latin American Citizens) should also be studied for their possible utilization in the campus-based programs.

These three issues should be considered in the next Commission report to the Legislature concerning equal educational opportunity.

Moreover, since increased educational opportunity and achievement for minorities and women rests with both postsecondary institutions and the public elementary and secondary schools, it is essential that the State Department of Education be substantially involved in the development and implementation of these plans. The segments should seek to work with the Department as much as possible in the preparation of their reports and the development of their plans.

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3. For example, the Student Affirmative Action Program, University of California, San Diego (October 1976) assigns responsibility to specific individuals and states that "failure to fully execute these Student Affirmative Action policies and procedures will not be tolerated. All personnel must share in this realization, especially those who have the authority and responsibility to accomplish these objectives. p. 2.

IX. CONCLUSIONS AND RECOMMENDATIONS

University of California President David S. Saxon recently stated that "this nation has yet to fulfill the promise in the Declaration of Independence of equal opportunity for all." This statement also applies to California public postsecondary education, where equal educational opportunity remains more of a promise than a reality for Black, Chicano/Latino, and women students. Despite considerable effort by the segments and expanded financial support from the State government, little progress has been made during the past four years in eliminating this inequality.

This second annual Commission report on equal educational opportunity in California offers the following conclusions and recommendations.

- Conclusion 1

The three public segments need to conduct a thorough study and evaluation of their student affirmative action programs. Most of the current programs were established during the period 1968-1973, when there was a general increase in the enrollment percentage of Black, Chicano/Latino, and women students. The fact that the enrollment rate for ethnic minorities has now leveled off indicates that the programs should be evaluated to determine their success in meeting the needs of current and prospective students.

The University of California, as a result of its Student Affirmative Action Task Groups, has completed a thorough assessment of the barriers within the University which limit educational opportunities at the undergraduate level.[1] The other two public segments should undertake a similar assessment, and the University should conduct a comprehensive study of its graduate programs.

- Recommendation 1

Each of the three public segments should prepare a comprehensive student affirmative action plan. This plan should include a specific discussion of the problem of underrepresentation and an analysis of the barriers within the educational process to equal opportunity. Detailed planning

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1. A Report to the President of the University of California from the Student Affirmative Action Task Groups, July 1975.

goals should be developed, with a timetable for achieving them. Program responsibility should be assigned to specific individuals and a method developed to hold them accountable.

Each of the three public segments should submit its plan to the California Postsecondary Education Commission by August 1, 1977. Using these three plans, the Commission will prepare an integrated statewide student affirmative action plan, including budget and cost estimates for all current and proposed programs. The Commission will submit this plan to the Legislature by January 1, 1978.

- Conclusion 2

The lack of adequate, low-cost child-care centers is a major impediment for women and ethnic minorities desiring to attend public postsecondary institutions. Both the California State University and Colleges and the University of California report that they have day-care centers on all of their campuses. However, only 60 percent of the 104 California Community Colleges offer access to child care facilities. Measures need to be taken immediately to remedy this situation since women account for approximately 50 percent of the total Community College enrollment.

- Recommendation 2

The establishment of quality child-care facilities should be a top priority in implementing equal educational opportunity programs and activities in the public institutions. The California Community Colleges should develop a plan to address the problem of inadequate child-care facilities on its campuses. The four-year institutions should begin to assess the quality of their existing facilities and to determine if the needs of all of the students are being met in this area. The segments should begin this assessment and the needed planning in the reports due August 1, 1977; and the segments should provide a comprehensive assessment in the subsequent report submitted pursuant to ACR 151.

- Conclusion 3

In recent years, an increasing number of students are choosing to attend postsecondary education on a part-time basis. Due to family and work commitments, as well as financial limitations, women and ethnic-minority students are particularly oriented toward participation on a part-time basis. Traditionally, because of an open-door policy and the nature of its programs, the California Community Colleges do not require students to enroll on a full-time basis. In Fall 1976, approximately 70 percent of the Community College student body was enrolled part time. Similarly,

the California State University and Colleges with a different segmental mission, operates on the premise that there should be no disadvantage associated with part-time student status. Consequently, in Fall 1976, 77 percent of the graduate student body and 28.5 percent of the undergraduate student body were enrolled part time.

The University of California is the only public institution which discourages part-time enrollments.[2] However, in 1971, a University report prepared by the President's Task Force on the Extended University recommended that opportunities for part-time students be provided for undergraduates at the upper division level and for graduate students.[3] Three years later, another University report indicated that, of 1,767 students sampled in Spring of 1972, a "sizeable minority" of those planning to attend graduate school preferred the idea of enrolling as part-time University students, rather than as full-time students.[4]

- Recommendation 3

In assessing equal educational opportunities provided at the graduate and professional level, the University of California should begin to address the concerns of part-time students. The student affirmative action plan developed by the University should provide a general assessment and rationale for the current University policy stressing full-time enrollment. The University report to the Commission should also indicate which schools and/or programs have developed measures which facilitate part-time enrollment at the graduate and professional level. The University should begin to address this issue in the report due August 1, 1977, and the University should provide a comprehensive assessment in the subsequent report submitted pursuant to ACR 151.

- Conclusion 4

Some of the barriers to equal educational opportunity in postsecondary education are beyond the direct responsibility of the institutions

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2. In Fall 1976, 5.7 percent of the graduate student body and 7.1 percent of the undergraduate student body at the University were enrolled part time.

3. "Degree Programs for the Part-Time Student: A Proposal," A Report of the President's Task Force on the Extended University, University of California, November 1971.

4. "Interest in Alternative Higher Education Programs Among University of California Undergraduates," the Extended University of the University of California, Report M-1, May 1974.

themselves. The most important of these barriers is the inadequate elementary and secondary school preparation received by many ethnic minorities and the consequent high dropout rate for Chicano/Latino and Black students. It is impossible for these minority groups to achieve equal access to postsecondary education when approximately 35 percent of the potential students do not complete high school.

Chicano/Latino students have the highest secondary-school dropout rate in California, compared to all other ethnic groups.[5] The initial cause of this high rate is limited or no English-language skill of the child entering school and the inability of the school to build on the strengths the pupil brings to school. The inability of limited- or non-English speaking pupils to understand classroom instruction produces the previously mentioned pattern of grade repetition, resulting in overageness and a consequent increase in the dropout rate.

It is the responsibility of public schools to meet the educational needs of the students. Given the high dropout rate and the low achievement levels in reading and mathematics of the Black and Chicano/Latino high school graduates, it is clear that these needs are not being met. Postsecondary education is a major instrument for change in our society, and the postsecondary institutions also need to respond positively to the problem of inadequate elementary and secondary school preparation for ethnic minorities.

- Recommendation 4

There is a demonstrated need for an increased number of trained bilingual/bicultural teachers in California's elementary and secondary schools. The teacher preparation programs in the public institutions should begin to respond to this need. The Commission for Teacher Preparation and Licensing should work with staff from the Postsecondary Education Commission and the California State University and Colleges to develop a detailed statement of California's needs in terms of teacher training, as well as a proposal for responding to those needs.

The need also exists for increased effectiveness of programs preparing teachers to work with ethnic minority students in elementary and secondary schools in low-income areas. Staff from the Commission and the public segments should work cooperatively with the State Department of Education and the Commission on Teacher Preparation and Licensing to develop specific proposals to increase the number of teachers capable of

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5. See: "The California High School Dropout Survey," a report to the California Legislature . . . California Department of Education, Sacramento, 1976.

creating effective learning situations in low-income school districts. These proposals should be submitted to the Legislature by January 1, 1979, in the fourth annual Commission report on equal educational opportunity in postsecondary education.

- Conclusion 5

During the past eight years, various public institutions have developed effective and, in some cases, unique programs to respond to the needs of women and ethnic minorities. Student affirmative action programs throughout the State would benefit if information about these programs were shared more effectively between and among institutions and segments. Thus far, the three public segments have not made enough effort to learn from the experiences of institutions either within another public segment or the independent sector.

- Recommendation 5

During the next 12 months, Commission and segmental staffs should work cooperatively to organize intersegmental meetings of persons responsible for various student affirmative action programs. The purposes of these meetings will be to share ideas about programs and activities which are successful, develop methods to evaluate student support service programs, and develop mechanisms for continued communication between and among individuals with similar responsibilities within the segments.

- Conclusion 6

Meaningful analysis of the status and needs of ethnic minorities in postsecondary education is handicapped by the limited quality of available data. The primary cause of this problem is the high non-response rate of students asked to identify their ethnic backgrounds. To illustrate, data provided by the California State University and Colleges is vulnerable in this area, since 25.4 percent of the undergraduate and 20.4 percent of the graduate students did not identify their ethnicity in Fall 1976.[6] The public segments should attempt to improve their data-collection procedures so as to reduce this high rate of "no response."

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6. In the University of California, 8.4 percent of the undergraduate students and 15.0 percent of the graduate students did not identify their ethnicity in Fall 1976.

- Recommendation 6

The public segments should continue to address the problem of collecting data about student ethnicity and develop specific proposals which might result in a reduced rate of "no response." This issue is of high priority, and the segments should give the problem thorough consideration in the reports pursuant to ACR 151 due on or before July 1, 1978.

- Conclusion 7

The Commission is committed to the support of programs which promote access for minority students, and it encourages all postsecondary institutions to maintain and expand, wherever possible, programs which increase educational opportunities for racial and ethnic minorities. At the present time, however, the Bakke decision of the California Supreme Court has caused considerable uncertainty about the status of many minority-access programs.

Nevertheless, the University, the State University, and the Community Colleges should make every effort possible, consistent with the final Bakke decision, to achieve the effective integration of our schools, and to work to correct the gross underrepresentation of minorities in the health and legal professions.

- Recommendation 7

The Commission's Ad Hoc Committee on Student Affirmative Action should meet as necessary with representatives of the University of California and the California State University and Colleges to discuss current regular and special admissions criteria, and the application of the Bakke decision when decided by the United States Supreme Court. The Commission intends to work with the public segments in interpreting the implications of the final Bakke decision for minority-access programs.

APPENDIX A
Student Body Composition

Table

1 CSUC Undergraduate Student Body Ethnic Composition 1973-1976 . . . . . A-1

2 CSUC Graduate Student Body Ethnic Composition 1973-1976 . . . . . A-2

3 University of California Undergraduate Student Body Ethnic/Racial Composition 1973-1976 . . . . . A-3

4 University of California Graduate Student Body Ethnic/Racial Survey 1973-1976 . . . . . A-4

5 Sex Composition of Enrollments in the Public Segments of California Postsecondary Education 1972-1976 . . A-5

6 California State University & Colleges Degrees Conferred, by Ethnicity (By Percent) 1975-1976 . . A-6

California State University & Colleges Degrees Conferred, by Ethnicity (By Number) 1975-1976 . . . A-6

7 University of California Degrees Conferred, by Ethnicity (By Percent) 1975-1976 . . . . . A-7

University of California Degrees Conferred, by Ethnicity (By Gross Number) 1975-1976 . . . . . A-7

8 University of California Professional Degrees Conferred, by Sex, by Ethnicity (By Numbers) 1975-1976 . . . . . A-8

9 University of California Doctoral Degrees Conferred, By Sex, by Ethnicity (By Numbers) 1975-1976 . . . . A-9

University of California Doctoral Degrees Conferred, by Sex, by Ethnicity (By Percent) 1975-1976 . . . . A-9

10 California State University & Colleges Masters Degrees Conferred, by Sex, by Ethnicity (By Gross Number) 1975-1976 . . . . . A-10

California State University & Colleges Masters Degrees Conferred, by Sex, by Ethnicity (By Percent) 1975-1976 . . . . . A-10

11 University of California Masters Degrees Conferred, by Sex, by Ethnicity (By Numbers) 1975-1976 . . . . A-11

University of California Masters Degrees Conferred, by Sex, by Ethnicity (By Percent) 1975-1976 . . . . A-11

12 University of California New Undergraduates by Ethnic Code and Level--Domestic Students Only A-12

13 University of California EOP Enrollments, New Undergraduates Fall 1975-1976 . . . . . A-13

Table 1

CSUC
Undergraduate Student Body
Ethnic Composition
1973-1976

	Fall 1973	Fall 1974	Fall 1975	Fall 1976	% Increase 1973-1976
American Indian	2,048	2,578	3,150	2,312	+12.8%
Black	11,069	11,420	12,584	12,850	+16.0%
Spanish Surnamed	11,626	12,254	13,677	13,924	+19.7%
Asian	10,282	10,266	10,723	10,318	+ 0.3%
White	128,731	138,246	139,955	135,421	+ 5.1%
Total Undergraduate Student Body*	223,130	225,738	239,051	233,862	+4.8%

* Total undergraduate student body includes those who did not respond to the question concerning ethnicity

Table 2

CSUC
Graduate Student Body
Ethnic Composition
1973-1976

	Fall 1973	Fall 1974	Fall 1975	Fall 1976	% Increase 1973-1976
American Indian	501	622	664	591	+17.9%
Black	2,143	2,340	2,543	2,584	+20.5%
Spanish Surnamed	2,001	2,281	2,643	2,829	+41.4%
Asian	2,568	2,677	3,013	2,859	+11.3%
White	36,796	39,322	40,864	39,741	+ 8.0%
Total Graduate Student Body*	63,503	65,804	71,840	69,872	+10.0%

*Total graduate student body includes those who did not respond to the question concerning ethnicity

Table 3

University of California
Undergraduate Student Body
Ethnic/Racial Composition
1973-1976

	Fall 1973	Fall 1974	Fall 1975	Fall 1976	% Increase 1973-1976
American Indian	473		443	438	- 7.4%
Black	3,772		3,524	3,355	-11.1%
Spanish Surnamed	3,866		4,403	4,351	+12.6%
Asian	7,431		8,164	7,911	+ 6.5%
White	59,957		67,014	63,955	+ 6.7%
Total Undergraduate Student Body*	83,927		86,174	83,822	

* Total undergraduate student body does not include those who made no response to the question concerning ethnicity

Table 4

University of California
Graduate Student Body
Ethnic/Racial Survey
1973-1976

	Fall 1973	Fall 1974	Fall 1975	Fall 1976	% Increase 1973-1976
American Indian	156		148	165	+ 5.8%
Black	1,486		1,443	1,235	-16.9%
Spanish Surnamed	1,427		1,741	1,456	+ 2.0%
Asian	2,611		2,824	1,829	-29.9%
White	20,771		23,509	22,742	+ 9.5%
Total Graduate Student Body*	29,934		30,956	31,559	

*Total graduate student body does not include those who made no response to the question concerning ethnicity

Table 5

SEX COMPOSITION OF ENROLLMENTS IN THE PUBLIC SEGMENTS OF CALIFORNIA POSTSECONDARY EDUCATION 1972-1976

	Undergraduate		Graduate	
	Male	Female	Male	Female
U.C.				
Fall 1972	44,514(55.3%)	35,864(44.7%)	24,071(73.4%)	8,721(26.6%)
Fall 1973	46,764(54.8%)	38,517(45.2%)	24,192(72.1%)	9,381(29.9%)
Fall 1974	47,799(54.4%)	40,078(45.6%)	24,294(70.3%)	10,285(29.7%)
Fall 1975	50,053(54.2%)	42,348(45.8%)	24,815(68.6%)	11,270(31.2%)
Fall 1976	48,905(53.4%)	42,615(46.6%)	25,086(67.6%)	12,042(32.4%)
C.S.U.C.				
Fall 1972	127,008(58.7%)	89,414(41.3%)	32,726(54.3%)	27,589(45.7%)
Fall 1973	127,774(57.3%)	95,356(42.7%)	33,436(52.7%)	30,067(47.3%)
Fall 1974	125,881(55.8%)	99,857(44.2%)	33,867(51.5%)	31,937(48.5%)
Fall 1975	132,326(55.3%)	106,725(44.7%)	36,373(50.6%)	35,467(47.4%)
Fall 1976	125,632(53.7%)	108,230(46.3%)	33,727(48.3%)	36,145(51.7%)
C.C.C.				
Fall 1972	402,892(55.6%)	321,540(44.4%)		
Fall 1973	468,928(56.0%)	383,889(45.0%)		
Fall 1974	513,171(53.5%)	446,536(46.5%)		
Fall 1975	597,125(54.2%)	504,423(45.8%)		
Fall 1976	not available			

Table 6

California State University & Colleges
Degrees Conferred, by Ethnicity
(By Percent)
1975-1976

	Bachelors	Masters
Black	3.9%	4.1%
Spanish-surnamed	4.6	2.9
American Indian	1.2	0.7
Asian	4.7	3.7
Filipino	0.2	0.1
Non-resident alien	2.4	3.9
White	65.0	56.6
Other	1.7	1.5
No Response	16.3	26.5

California State University & Colleges
Degrees Conferred, by Ethnicity
(By Number)
1975-1976

	Bachelors	Masters
Black	1,766	417
Spanish-surnamed	2,063	292
American Indian	513	73
Asian	2,107	372
Filipino	67	6
Non-resident alien	1,078	398
White	28,981	5,705
Other	764	150
No Response	7,259	2,674
Total	44,598	10,087

Table 7

University of California
Degrees Conferred, by Ethnicity
(By Percent)
1975-1976

	Bachelors	Masters	Doctorates
Black	3.2%	3.7%	1.9%
Spanish-surnamed	3.0	2.3	0.8
American Indian	0.4	0.4	1.9
Asian	7.8	4.1	2.7
Filipino	0.5	0.2	0.0
Non-resident alien	2.2	14.0	17.1
White	76.1	65.7	60.3
Other	2.9	2.4	2.3
No Response	3.8	7.2	14.9

University of California
Degrees Conferred, by Ethnicity
(By Gross Number)
1975-1976

	Bachelors	Masters	Doctorates
Black	677	224	39
Spanish-surnamed	632	136	16
American Indian	83	24	1
Asian	1,640	246	56
Filipino	97	12	0
Non-resident alien	464	843	354
White	15,952	3,948	1,246
Other	611	145	48
No Response	798	431	308
Total	20,954	6,009	2,068

Table 8

University of California
Professional Degrees Conferred, by Sex, by Ethnicity
(By Numbers)
1975-1976

	Black	American Indian	Spanish Surnamed	Asian	White	Non-Resident Alien	Filipino	Non-Respondent	Other	Total	
DENTISTRY											
Male	7	1	14	16	101	1	2	11	5	158	(90.8%)
Female	0	0	2	4	8	0	0	2	0	16	(9.2%)
Total	7	1	16	20	109	1	2	13	5	174	
	(4.0%)	(.6%)	(9.2%)	(11.5%)	(62.6%)	(.6%)	(1.2%)	(7.5%)	(2.9%)		
MEDICINE											
Male	14	1	18	39	319	5	2	15	18	431	(78.1%)
Female	9	1	7	5	87	6	1	3	2	121	(21.9%)
Total	23	2	25	44	406	11	3	18	20	552	
	(4.2%)	(.4%)	(4.5%)	(8.0%)	(73.6%)	(2.0%)	(.5%)	(3.3%)	(3.6%)		
OPTOMETRY											
Male	2	0	1	13	22	3	0	2	4	47	(78.3%)
Female	0	0	0	6	6	1	0	0	0	13	(21.7%)
Total	2	0	1	19	28	4	0	2	4	60	
	(3.3%)		(1.7%)	(31.7%)	(46.7%)	(6.7%)		(3.3%)	(6.7%)		
VETERINARY											
Male	0	1	2	0	57	0	0	1	1	62	(74.7%)
Female	0	0	0	3	18	0	0	0	0	21	(25.3%)
Total	0	1	2	3	75	0	0	1	1	83	
		(1.2%)	(2.4%)	(3.6%)	(90.4%)			(1.2%)	(1.2%)		
LAW											
Male	32	4	49	18	343	6	2	18	21	493	(65.7%)
Female	24	2	14	12	194	0	1	5	6	258	(34.3%)
Total	56	6	63	30	537	6	3	23	27	751	
	(7.5%)	(.8%)	(8.4%)	(4.0%)	(71.5%)	(.8%)	(.4%)	(3.1%)	(3.6%)		
PHARMACY											
Male	0	0	2	7	25	0	0	5	0	39	(63.9%)
Female	0	0	0	17	3	0	0	2	0	22	(36.1%)
Total	0	0	2	24	28	0	0	7	0	61	
			(3.3%)	(39.3%)	(45.9%)			(11.5%)			

Table 9

University of California
Doctoral Degrees Conferred, by Sex, by
Ethnicity (by numbers) 1975-1976

	Black	American Indian	Spanish Surnamed	Asian	White	Non-Resident Alien	Filipino	Non-Respondent	Other	Total
Male	27	1	14	43	955	310	0	229	44	1623
Female	12	0	2	13	291	44	0	79	4	445

University of California
Doctoral Degrees Conferred, by Sex, by
Ethnicity (by percent) 1975-1976

Male	1.7%	.06%	0.9%	2.7%	58.8%	19.1%	0	14.1%	2.7%	100%
Female	2.7%	0	0.5%	2.9%	65.4%	9.9%	0	17.8%	.9%	100%

Table 10

California State University & Colleges
Masters Degrees Conferred, by Sex, by Ethnicity
(by gross number)
1975-1976

	Black	American Indian	Spanish Surnamed	Asian	White	Non-Resident Alien	Filipino	Non-Respondent	Other	Total
Male	164	42	177	216	2938	269	4	1452	96	5358
Female	253	31	115	156	2767	129	2	1222	54	4729

California State University & Colleges
Masters Degrees Conferred, by Sex, by Ethnicity
(by percent)
1975-1976

Male	3.1%	.8%	3.3%	4.0%	54.8%	5.0%	.07%	27.1%	1.8%	99.9%
Female	5.4%	.7%	2.4%	3.3%	58.5%	2.7%	.04%	25.8%	1.1%	99.9%

Table 11

University of California
Masters Degrees Conferred by Sex, by Ethnicity
(by numbers)
1975-1976

	Black	American Indian	Spanish Surnamed	Asian	White	Non-Resident Alien	Filipino	Non-Respondent	Other	Total
Male	99	15	94	159	2428	707	9	272	89	3872
Female	125	9	42	87	1520	136	3	159	56	2137

University of California
Masters Degrees Conferred, by Sex, by Ethnicity
(by percent)
1975-1976

Male	2.6%	.4%	2.4%	4.1%	62.7%	18.3%	.2%	7.0%	2.3%	100%
Female	5.9%	.4%	2.0%	4.1%	71.1%	6.4%	.1%	7.4%	2.6%	100%

Table 12

University of California
New Undergraduates By Ethnic Code
and Level--Domestic Students Only*

Freshmen	Black	Native American	Chicano	Latino	Filipino
(15,505) 1975	4.1	.4	3.2	.9	1.0
(14,077) 1976	4.4	.4	4.4	1.2	1.1
Sophomores					
(2,641) 1975	5.0	.8	6.1	1.9	.6
(2,104) 1976	5.6	1.1	6.7	1.8	.8
Juniors					
(7,097) 1975	3.2	.5	4.2	1.3	.6
(5,886) 1976	3.7	.5	4.8	1.6	.4
Seniors					
(476) 1975	3.4	1.1	2.1	1.3	.0
(316) 1976	1.6	1.6	3.5	1.3	.0
TOTAL					
(25,719) 1975	3.9	.5	3.8	1.1	.8
(22,383) 1976	4.3	.5	4.7	1.4	.9
	(A decrease of 41 students)	(A decrease of 17 students)	(An increase of 75 students)	(An increase of 31 students)	(A decrease of 4 students)

* Figured on number of students with known ethnic identity.

Table 13

University of California
EOP Enrollments, New Undergraduates
Fall 1975-76

Campus	Fall 1975	Fall 1976	Difference
Berkeley	472	719	247
Davis	383	508	125
Irvine	296	341	45
Los Angeles	883	926	43
Riverside	60	61	1
San Diego	341	410	69
Santa Barbara	272	318	46
Santa Cruz	179	138	41
	2886	3421	535

APPENDIX B
Comparison Base

Chart

1 Minority Enrollments in the Three Public Segements of California Postsecondary Education 1975

MINORITY ENROLLMENTS IN THE THREE PUBLIC SEGMENTS OF CALIFORNIA POSTSECONDARY EDUCATION 1975

Minority Group	1970 Census Figure[1]	State K-12 Population 1973	1973 State 12th Grade Population	Community Colleges[2] Male	Community Colleges[2] Female	CSUC[3] Undergraduate H	CSUC[3] Undergraduate F	CSUC[3] Undergraduate Total	CSUC[3] Graduate H	CSUC[3] Graduate F	CSUC[3] Graduate T
American Indian	0.5%	0.5%	0.4%	1.0%	0.9%	1.8%	1.5%	1.7%	1.4%	1.2%	1.3%
Asian	2.8	3.0	3.1	3.4	3.5	5.6	6.0	5.8	6.3	5.4	5.9
Black	7.0	9.7	7.9	8.3	7.8	6.0	7.7	6.8	4.0	5.9	4.9
Spanish-Surnamed[5]	15.5	17.2	12.7	8.5	6.9	8.1	6.4	7.3	5.9	4.3	5.1
Filipino				1.0	1.0						
White & All Other Students[6]	74.19	69.5	75.9	67.4	68.7	74.7	75.6	75.1	78.1	80.6	79.3
Non-Respondents				10.5	11.3	22.7	21.2	22.0	28.2	28.4	28.3

Minority Group	U.C.[4] Undergraduate H	U.C.[4] Undergraduate F	U.C.[4] Undergraduate T	U.C.[4] Graduate H	U.C.[4] Graduate F	U.C.[4] Graduate T
American Indian	.54%	.50%	.52%	.53%	.50%	.52%
Asian	9.11	8.82	8.97	6.55	6.28	6.45
Black	3.59	4.68	4.10	3.95	6.07	4.72
Spanish-Surnamed	5.34	4.41	4.90	5.67	4.22	5.15
Filipino	.64	.75	.69	.35	.29	.33
White & All Other Students	78.31	79.03	78.65	80.30	80.84	80.49
Non-Respondents						

1. U.S. Census Data (1970)(Modified after Spanish recount). See Report on Student Affirmative Action at the University of California, Office of the President, February 19, 1976.

2. Source: CCC Fall 1975 District Data by Staff Category and Sex and Minority Classification. Data includes only those districts responding to the CCC survey.

3. Fall 1975 CSUC Ethnic Group Enrollment (Code: IR 76-03); Table 1 Percentage Distribution by ethnic group is based upon response by students to CSUC survey. The "no response" data is based on total enrollment.

4. Source: Fall 1975 Official Enrollment File. Decline to state and no response excluded. Health Science Interns and residents excluded. Extended University Students from San Francisco are excluded.

5. Information in this chart for Spanish-surnamed students includes, for CSUC, students who identified themselves as either "Mexican American" or "Latin American" and, for UC, students who identified themselves as either "Mexican American" or other Spanish American.

6. Information in this chart for "White and all other students" includes, for CSUC, students who identified themselves as "Caucasian," and, for UC, students who identified themselves as "other Caucasian."

APPENDIX C
Trends in Access, Distribution, and Persistence

Table

1 Professional Degrees Conferred by Discipline, by Sex at the University of California 1971-72 to 1975-76 . . . . . C-1

2 California State University & Colleges Masters Degrees Conferred, by Program Category, by Sex 1975-1976 . C-2

3 University of California Masters Degrees Conferred, by Program Category, by Sex 1975-1976 . . . . . C-3

4 University of California Doctoral Degrees Conferred, by Program Category, by Sex 1975-1976 . . . . . C-4

5 Percentages of All Postsecondary Students in Higher Education and Other Postsecondary Institutions by Race and Sex, October 1973 . . . . . C-6

6 Persistence of 1966 Freshmen Attending Four-Year Colleges & Universities By Race, Spring 1970 . . . C-7

7 University of California Enrollment (ethnic groups indicated as percent of total students with known ethnic identity). C-8

8 California State University & Colleges Enrollment (ethnic groups indicated as percent of total students with known ethnic identity) C-9

9 CSUC Opening Fall 1976 Undergraduate Enrollment By Discipline, by Ethnicity C-10

10 CSUC Opening Fall 1976 Graduate Enrollment By Discipline, by Ethnicity C-11

11 University of California Opening Fall 1976 Undergraduate Enrollment By Discipline, by Ethnicity . . C-12

12 University of California Opening Fall 1976 Graduate Enrollment By Discipline, by Ethnicity C-13

Chart

1 Percent of Spring High School Graduates Who Attend College the Following Fall by Race, 1970 through 1973 . . . . . C-5

Table 1

Professional Degrees Conferred by Discipline, by Sex
at the University of California 1971-72 to 1975-76

Disciplines	Sex	1971-72	1972-73	1973-74	1974-75	1975-76
DENTISTRY	M	164	147	167	166	158
	F	5	4	4	8	16
	Total	169	151	171	174	174
MEDICINE	M	364	404	379	372	431
	F	43	40	49	71	121
	Total	407	444	428	443	552
OPTOMETRY	M	44	39	51	42	47
	F	3	7	6	8	13
	Total	47	46	57	50	60
VETERINARY MEDICINE	M	71	61	74	64	62
	F	11	18	12	22	21
	Total	82	79	86	86	83
LAW, GENERAL	M	636	608	593	551	493
	F	83	103	134	210	258
	Total	719	711	727	761	751
PHARMACY	M	49	48	50	51	39
	F	33	37	35	32	22
	Total	82	85	87	83	61
TOTAL *	M	1328	1307	1314	1246	1230
	F	178	209	240	351	451
	Total	1506	1516	1554	1597	1681

* Hastings is not included in these figures

Source: Postsecondary Education in California: Information Digest, 1977 California Postsecondary Education Commission, p. 59.

Table 2

California State University & Colleges
Masters Degrees Conferred, by Program Category, by Sex
1975-1976

	Male	Female
Agriculture and Natural Resources	104	12
Architecture and Environmental Design	62	19
Area Studies	12	12
Biological Sciences	203	63
Business and Management	777	122
Communications	49	21
Computer and Information Sciences	59	14
Education	1444	2262
Engineering	423	8
Fine and Applied Arts	294	236
Foreign Languages	46	75
Health Sciences	166	370
Home Economics	4	102
Letters	233	312
Library Science	57	188
Mathematics	64	32
Physical Science	114	19
Psychology	351	349
Public Affairs and Services	422	289
Social Science	425	202
Interdisciplinary Studies	49	21
TOTAL	5358 (53.1%)	4729 (46.9%)

Source: Postsecondary Education in California: Information Digest, 1977 California Postsecondary Education Commission, p. 58.

Table 3

University of California

Masters Degrees Conferred, by Program Category, by Sex
1975-1976

	Male	Female
Agriculture and Natural Resources	124	35
Architecture and Environmental Design	164	81
Area Studies	19	22
Biological Sciences	207	75
Business and Management	631	192
Communications	11	5
Computer and Information Sciences	88	15
Education	119	181
Engineering	922	42
Fine and Applied Arts	204	198
Foreign Languages	62	108
Health Sciences	254	496
Home Economics	9	16
Letters	139	150
Library Science	44	108
Mathematics	115	22
Physical Science	256	36
Psychology	39	26
Public Affairs and Services	65	124
Social Science	354	166
Interdisciplinary Studies	32	37
TOTAL	3872 (64.4%)	2137 (35.6%)

Source: Postsecondary Education in California: Information Digest, 1977 California Postsecondary Education Commission, p. 56.

Table 4

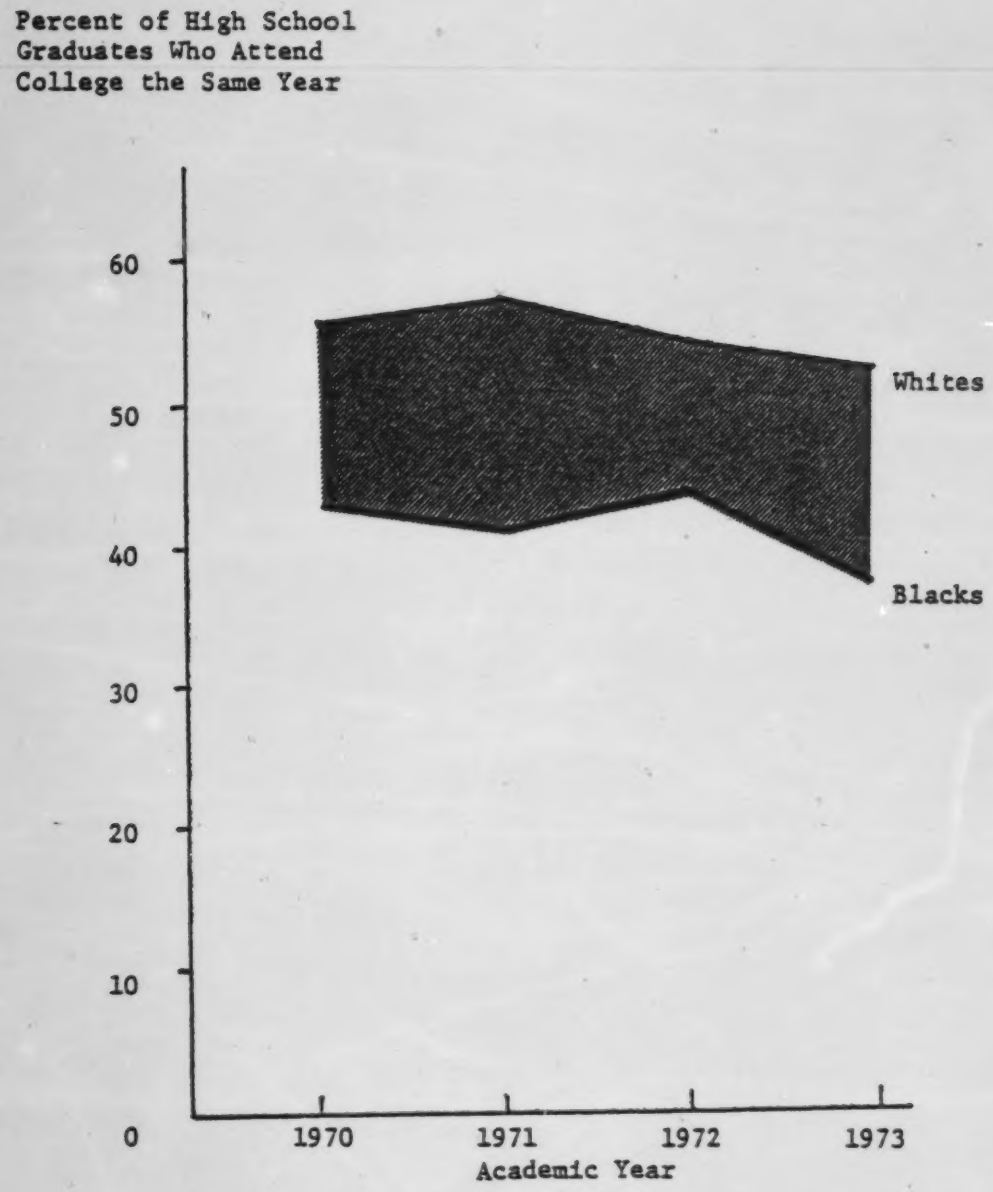
University of California
Doctoral Degrees Conferred, by Program Category, by Sex
1975-1976

	Male	Female
Agriculture and Natural Resources	29	0
Architecture and Environmental Design	11	3
Area Studies	5	1
Biological Sciences	284	84
Business and Management	39	2
Computer and Information Sciences	17	3
Education	93	55
Engineering	276	5
Fine and Applied Arts	19	13
Foreign Languages	36	34
Health Sciences	35	12
Home Economics	4	3
Letters	96	60
Library Science	1	1
Mathematics	76	10
Physical Science	259	27
Psychology	52	39
Public Affairs and Services	4	6
Social Science	267	84
Interdisciplinary Studies	19	3
TOTAL	1623 (78.5%)	445 (21.5%)

Source: Postsecondary Education in California: Information Digest, 1977 California Postsecondary Education Commission, p. 59.

Chart 1

PERCENT OF SPRING HIGH SCHOOL GRADUATES WHO ATTEND COLLEGE THE FOLLOWING FALL BY RACE, 1970 through 1973



SOURCE: U.S. Census, College Plans of High School Seniors;October 1972, Table E.

Table 5

Percentages of All Postsecondary Students in Higher Education and Other Postsecondary Institutions by Race and Sex, October 1973

	Black		White	
	Male	Female	Male	Female
Total All Ages	391,000	397,000	4,821,000	3,839,000
Higher Education	80.9	79.1	84.2	85.4
Other Postsecondary	19.1	20.9	15.8	14.6
Total	100.0	100.0	100.0	100.0
16-17 Year Olds				
Higher Education	82.7	83.3	90.2	85.0
Other Postsecondary	17.3	16.7	9.8	15.0
Total	100.0	100.0	100.0	100.0
18-19 Year Olds				
Higher Education	89.7	79.1	89.4	84.7
Other Postsecondary	10.3	20.9	10.6	15.3
Total	100.0	100.0	100.0	100.0
20-21 Year Olds				
Higher Education	97.4	88.7	92.1	91.0
Other Postsecondary	2.6	11.3	7.9	9.0
Total	100.0	100.0	100.0	100.0
22-24 Year Olds				
Higher Education	70.3	77.3	85.6	86.9
Other Postsecondary	29.7	22.7	14.4	13.1
Total	100.0	100.0	100.0	100.0
25-29 Year Olds				
Higher Education	59.4	76.6	81.5	85.1
Other Postsecondary	40.6	23.4	18.5	14.9
Total	100.0	100.0	100.0	100.0
30-34 Year Olds				
Higher Education	93.8	78.6	78.2	81.2
Other Postsecondary	6.2	21.4	21.8	18.8
Total	100.0	100.0	100.0	100.0
35+ Year Olds				
Higher Education	74.4	73.9	63.0	77.0
Other Postsecondary	25.6	26.1	37.0	23.0
Total	100.0	100.0	100.0	100.0

Source: U.S. Census (1975), unpublished data, in Equal Educational Opportunity for Blacks in U.S. Higher Education: As Assessment, Institute for the Study of Educational Policy, Howard Univers-ty Press, Washington, D.C., 1976.

Table 6

Persistence of 1966 Freshmen Attending
Four-Year Colleges & Universities
By Race, Spring 1970

		PERCENTS			
	Total	Returned for Second Year	Received Degree	Still Enrolled	Not Enrolled
Black Students:					
High School GPA					
A	201	83.5	64.1	31.3	4.6
B	1,262	67.4	40.5	45.6	13.9
C	831	64.0	27.6	50.4	22.0
Non-Black Students:					
High School GPA					
A	10,512	84.3	64.2	28.8	7.0
B	26,521	77.1	42.2	38.4	19.4
C	8,690	64.9	32.7	45.9	21.4

Source: Astin, Alexander W., *College Dropouts: A National Profile,* Tables 4 and 5.

As reported in Equal Educational Opportunity for Blacks in U.S. Higher Education: An Assessment. Institute for the Study of Educational Policy, Howard University Press, 1976, p.148.

Table 7

University of California
Enrollment

(ethnic groups indicated as percent of total students with known ethnic identity)

	1968	1969	1970	1971	1972	1973	1974
Black							
Undergraduate	2.2	2.9	3.6	4.5	5.1	4.9	4.5
Graduate	1.9	3.0	4.0	5.2	5.7	5.5	5.0
Asian							
Undergraduate	5.7	7.5	7.4	7.9	8.5	9.6	10.1
Graduate	2.8	4.3	4.2	7.9	7.9	9.6	9.8
Indian							
Undergraduate	0.3	0.4	0.6	0.6	0.6	0.6	0.6
Graduate	0.2	0.3	0.4	0.5	0.5	0.6	0.6
Mexican/ Spanish American							
Undergraduate	1.8	3.1	3.3	4.4	4.7	5.0	5.0
Graduate	1.1	2.4	2.8	4.4	5.0	5.2	5.5
Total Minority (excluding "other minorities")							
Undergraduate	10.0	13.9	14.9	17.4	18.9	20.1	20.2
Graduate	6.0	10.0	11.4	18.0	19.1	20.9	20.8

Source: "Fall 1974 Ethnic Survey Data", Office of Budgetary Planning, includes foreign students

Table 8

California State University & Colleges
Enrollment

(ethnic groups indicated as percent of total students with known ethnic identity)

	Fall 1968	Fall 1973	Fall 1974
Black	2.9	6.2	6.0
Mexican American	2.9	6.2	6.4
Asian American	3.4	6.0	5.6
Native American	0.7	1.2	1.4
Other (including Caucasian)	90.1	80.3	80.7

Source: Report to the California Postsecondary Education Commission in response to ACR 151...June 30, 1975, California State University and Colleges.

Table 9

CSUC
Opening Fall 1976 Undergraduate Enrollment
By Discipline, by Ethnicity

	Black	Hispanic	White
Agriculture and Natural Resources	27 (.4%)	130 (1.5%)	3457 (3.8%)
Architecture and Environmental Design	20 (.3%)	69 (.8%)	926 (1.0%)
Area Studies	15 (.2%)	44 (.5%)	257 (.3%)
Biological Sciences	251 (3.4%)	390 (4.5%)	5097 (5.5%)
Business and Management	1495 (20.2%)	1380 (15.9%)	16962 (18.5%)
Communications	239 (3.2%)	154 (1.8%)	2885(3.2%)
Computer and Information Sciences	27 (.4%)	41 (.5%)	780 (.9%)
Education	572 (7.7%)	727 (8.4%)	6253 (6.9%)
Engineering	144 (1.9%)	356 (4.1%)	4191 (4.6%)
Fine and Applied Arts	316 (4.3%)	436 (5.0%)	6324 (6.9%)
Foreign Languages	24 (.3%)	389 (4.5%)	893 (1.0%)
Health Sciences	480 (6.5%)	370 (4.3%)	4917 (5.4%)
Home Economics	131 (1.8%)	95 (1.1%)	2361 (2.6%)
Letters	219 (3.0%)	194 (2.2%)	4002 (4.4%)
Mathematics	65 (.9%)	69 (.8%)	1074 (1.2%)
Physical Science	63 (.9%)	80 (.9%)	2095 (2.3%)
Psychology	509 (6.9%)	431 (4.9%)	4700 (5.1%)
Public Affairs and Services	771 (10.4%)	817 (9.4%)	6116 (6.7%)
Social Science	1254 (17.0%)	1391 (16.0%)	9395 (10.3%)
Interdisciplinary Studies	368 (5.0%)	580 (6.7%)	5304 (5.8%)

Source: Postsecondary Education in California: Information Digest, 1977 California Postsecondary Education Commission, p. 24.

Table 10

CSUC
Opening Fall 1976 Graduate Enrollment
By Discipline, by Ethnicity

	Black	Hispanic	White
Agriculture and Natural Resources	5 (.2%)	11 (.4%)	332 (.8%)
Architecture and Environmental Design	7 (.3%)	14 (.5%)	245 (.6%)
Area Studies	8 (.3%)	27 (.9%)	106 (.3%)
Biological Sciences	25 (1.0%)	40 (1.4%)	1208 (3.0%)
Business and Management	154 (6.0%)	141 (5.0%)	3653 (9.2%)
Communications	17 (.7%)	17 (.6%)	327 (.8%)
Computer and Information Sciences	7 (.3%)	7 (.3%)	258 (.7%)
Education	703 (27.2%)	732 (25.9%)	8108 (20.4%)
Engineering	33 (1.3%)	69 (2.4%)	911 (2.3%)
Fine and Applied Arts	70 (2.7%)	66 (2.3%)	1767 (4.5%)
Foreign Languages	16 (.6%)	155 (5.5%)	342 (.9%)
Health Sciences	96 (3.7%)	56 (2.0%)	1684 (4.2%)
Home Economics	25 (1.0%)	18 (.6%)	443 (1.1%)
Letters	76 (3.0%)	85 (3.0%)	1877 (4.7%)
Library Science	4 (.2%)	6 (.2%)	245 (.6%)
Mathematics	10 (.4%)	14 (.5%)	354 (.9%)
Physical Science	12 (.5%)	16 (.6%)	572 (1.4%)
Psychology	128 (4.9%)	91 (3.2%)	1666 (4.2%)
Public Affairs and Services	258 (10.0%)	210 (7.4%)	2150 (5.4%)
Social Science	189 (7.3%)	200 (7.1%)	2349 (5.9%)
Interdisciplinary Studies	22 (.9%)	24 (.9%)	444 (1.1%)

Source: Postsecondary Education in California: Information Digest, 1977 California Postsecondary Education Commission, p. 25.

Table 11

University of California
Opening Fall 1976 Undergraduate Enrollment
By Discipline, by Ethnicity

	Black	Hispanic	White
Agriculture and Natural Resources	32 (1.8%)	45 (1.8%)	1534 (4.1%)
Architecture and Environmental Design	27 (1.5%)	30 (1.2%)	551 (1.5%)
Area Studies	1 (.1%)	15 (.6%)	156 (.4%)
Biological Sciences	159 (9.0%)	339 (13.7%)	5346 (14.4%)
Business and Management	29 (1.6%)	26 (1.1%)	748 (2.0%)
Communications	19 (1.1%)	12 (.5%)	239 (.6%)
Computer and Information Sciences	8 (.5%)	11 (.5%)	376 (1.0%)
Education	29 (1.6%)	37 (1.5%)	610 (1.6%)
Engineering	49 (2.8%)	118 (4.8%)	2379 (6.4%)
Fine and Applied Arts	93 (5.2%)	138 (5.6%)	2430 (6.5%)
Foreign Languages	25 (1.4%)	181 (7.3%)	835 (2.2%)
Health Sciences	42 (2.4%)	36 (1.5%)	536 (1.4%)
Home Economics	13 (.7%)	8 (.3%)	376 (1.0%)
Letters	154 (8.7%)	146 (5.9%)	3307 (8.9%)
Library Science			
Mathematics	22 (1.2%)	40 (1.6%)	788 (2.1%)
Physical Science	29 (1.6%)	63 (2.5%)	1527 (4.1%)
Psychology	177 (10.0%)	200 (8.1%)	2791 (7.5%)
Public Affairs and Services	41 (2.3%)	14 (.6%)	181 (.5%)
Social Science	607 (34.2%)	660 (26.7%)	7746 (20.8%)
Interdisciplinary Studies	218 (12.3%)	349 (14.1%)	4808 (12.9%)

Source: Postsecondary Education in California: Information Digest, 1977 California Postsecondary Education Commission, p. 26.

Table 12

University of California
Opening Fall 1976 Graduate Enrollment
By Discipline, by Ethnicity

	Black	Hispanic	White
Agriculture and Natural Resources	4 (.3%)	8 (.6%)	356 (1.6%)
Architecture and Environmental Design	38 (3.1%)	39 (2.7%)	412 (1.8%)
Area Studies	14 (1.1%)	9 (.6%)	121 (.5%)
Biological Sciences	45 (3.6%)	54 (3.7%)	2310 (10.2%)
Business and Management	76 (6.2%)	88 (6.0%)	1573 (6.9%)
Communications	2 (.2%)	2 (.1%)	41 (.2%)
Computer and Information Sciences	4 (.3%)	2 (.1%)	299 (1.3%)
Education	144 (11.2%)	153 (10.5%)	1874 (8.2%)
Engineering	27 (2.2%)	53 (3.6%)	1753 (7.7%)
Fine and Applied Arts	52 (4.2%)	41 (2.8%)	906 (4.0%)
Foreign Languages	16 (1.3%)	108 (7.4%)	556 (2.4%)
Health Sciences	365 (29.6%)	388 (26.7%)	4401 (19.4%)
Home Economics	1 (.1%)	0 (0.0%)	32 (.1%)
Law	179 (14.5%)	193 (13.3%)	1591 (7.0%)
Letters	18 (1.5%)	35 (2.4%)	1209 (5.3%)
Library Science	13 (1.1%)	13 (.9%)	255 (1.1%)
Mathematics	15 (1.2%)	15 (1.0%)	465 (2.0%)
Physical Science	11 (.9%)	23 (1.6%)	1548 (6.8%)
Psychology	33 (2.7%)	27 (1.9%)	426 (1.9%)
Public Affairs and Services	45 (3.6%)	53 (3.6%)	267 (1.2%)
Social Science	102 (8.3%)	124 (8.5%)	1944 (8.6%)
Interdisciplinary Studies	30 (2.4%)	28 (1.9%)	377 (1.7%)

Source: Postsecondary Education in California: Information Digest, 1977 California Postsecondary Education Commission, p. 27.

APPENDIX D
Barriers to Equal Educational Opportunity

Chart

1 Percent of High School Dropouts by Race, Age, and Place of Residence as of October, 1973 . . . . . D-1

2 Proportion of Non-High School Graduates (not enrolled in school), Ages 16 to 21, by Race and Sex October, 1973 . . . . . D-2

3 Years of School Completed by Race and Sex of Persons 25 Years and Older as of March, 1973 . . . . . D-3

4 Income Distribution of Black and White Freshmen Enrolled Full-Time in College October, 1973 . . . D-4

5 Estimates of School Holding Power Rates For Each Ethnic Group - California D-5

Chart 1

Percent of High School Dropouts by Race,
Age, and Place of Residence as of October, 1973

	Percent of Age and Race Groups		
	White	Black	Difference (White-Black)
Inner City			
16-17 Year Olds	10.7	10.1	0.6
18-19 Year Olds	17.1	27.1	-10.0
20-21 Year Olds	14.9	27.9	-13.0
Suburban			
16-17 Year Olds	6.6	8.8	- 2.2
18-19 Year Olds	12.0	20.6	- 8.6
20-21 Year Olds	10.8	29.8	-19.0
Rural			
16-17 Year Olds	10.8	11.8	- 1.0
18-19 Year Olds	16.2	24.5	- 8.3
20-21 Year Olds	16.4	37.6	-21.2

Source: U.S. Census, Social and Economic Characteristics of Students, October, 1973, Table 2.

Chart 2

Proportion of Non-High School Graduates
(not enrolled in school), Ages 16 to 21, by Race and Sex
October, 1973

	Percent Not Completing High School					
	White			Black		
Age Group	Male	Female	Total	Male	Female	Total
16-17 Years Old	8.7	9.2	9.0	10.6	10.0	10.3
18-19 Years Old	14.1	15.2	14.7	27.7	23.0	25.2
20-21 Years Old	14.2	13.2	13.7	27.1	33.1	30.4
All Groups	12 1	12.5	12.3	20.8	21.4	21.1

Source: U.S. Census, Social and Economic Characteristics of Students, October, 1973, Table 1.

Chart 3

Years of School Completed by Race and Sex of Persons
25 Years and Older as of March, 1973

	Percent			
	White		Black	
Years Completed	Male	Female	Male	Female
Elementary School				
0-4 Years	3.9	3.4	14.9	10.7
5-7 Years	7.5	6.9	15.3	14.5
8 Years	11.7	11.5	10.8	9.6
High School				
1-3 Years	14.8	16.5	20.9	25.2
4 Years	32.8	40.7	25.2	26.3
College				
1-3 Years	12.5	11.1	7.1	7.8
4 Years or more	16.8	9.9	5.9	6.0
Total	100%	100%	100%	100%

Source: U.S. Census, Statistical Abstracts of the United States, 1974, Table 187.

Chart 4

INCOME DISTRIBUTION OF BLACK AND WHITE FRESHMEN ENROLLED FULL-TIME IN COLLEGE
October, 1973

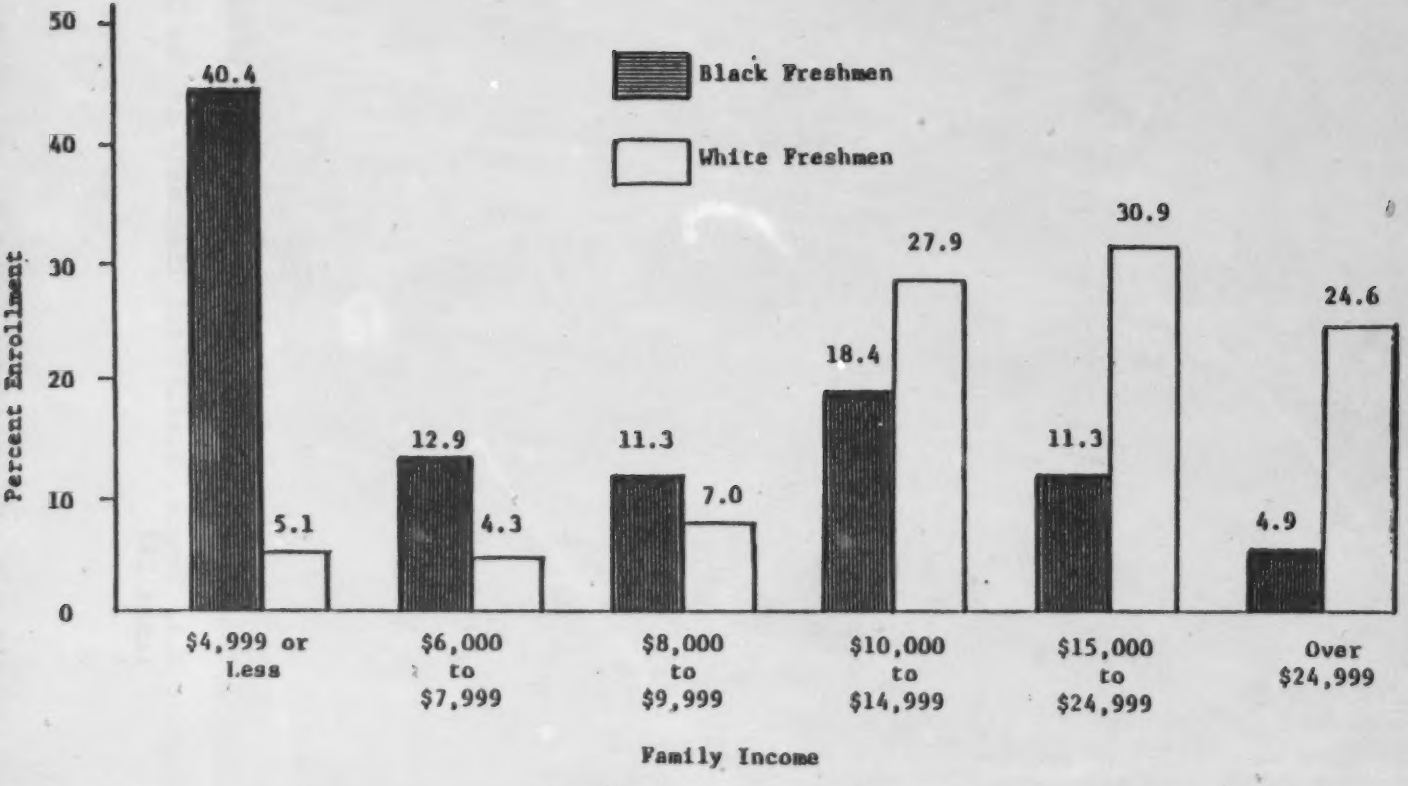
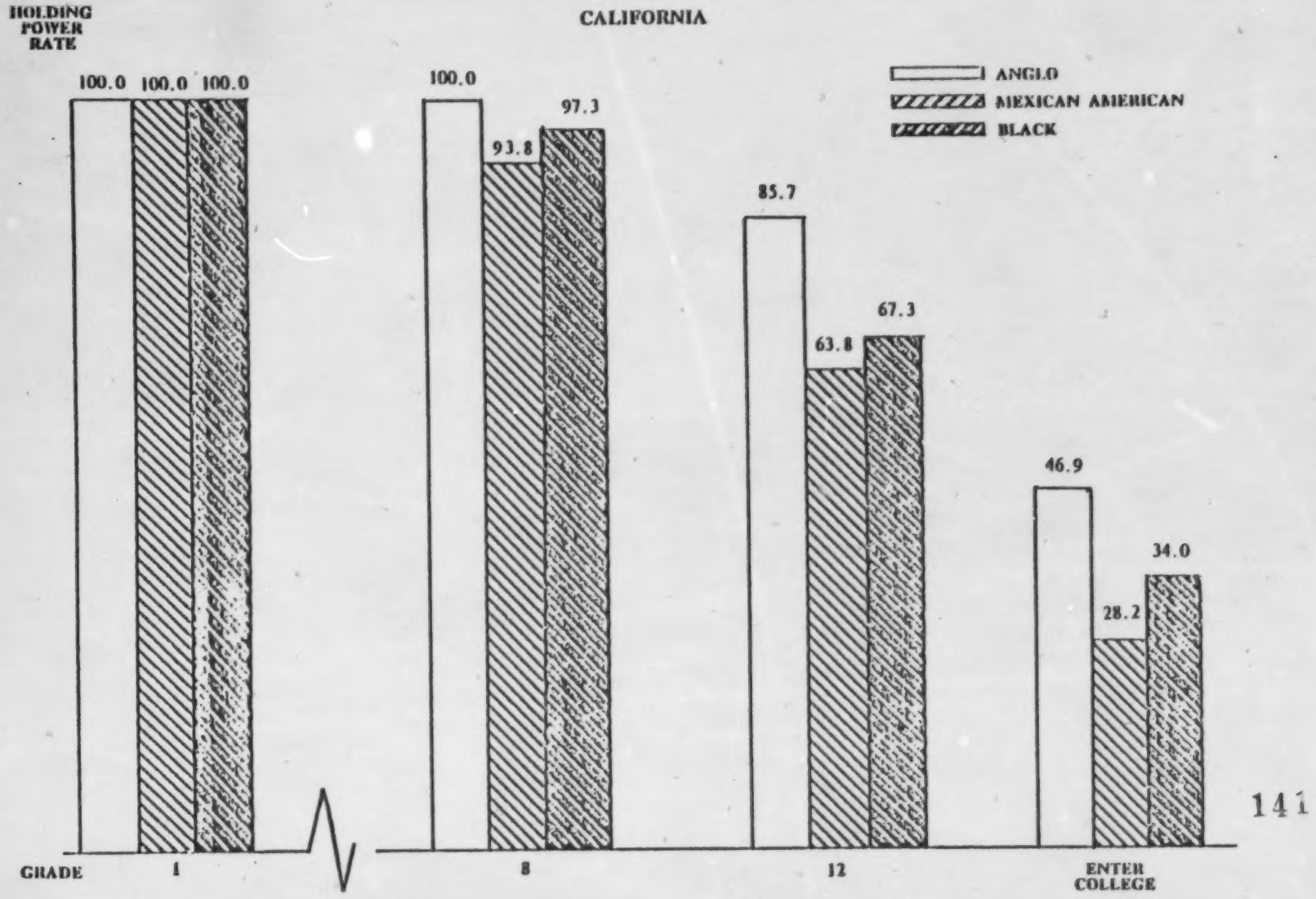


Chart 5

FIGURE 3

ESTIMATES OF SCHOOL HOLDING POWER RATES
FOR EACH ETHNIC GROUP
CALIFORNIA



APPENDIX E
The Bakke Decision

Item

1 Allan Bakke v. The Regents of the University of California, decision of the Supreme Court of the State of California E-1

2 Brief of Amici Curiae, in the Supreme Court of the United States, October Term 1976; The Regents of the University of California v. Allan Bakke E-26

3 Reply to Brief of Amici Curiae in Opposition to Certiorari in the Supreme Court of the United States, October Term 1976; The Regents of the University of California v. Allan Bakke E-51

4 The Bakke Decision and the California State University and Colleges: Memo from David Kagan, State University Dean, Student Affairs E-56

The Bakke Decision and the University of California: Memo from David S. Saxon, President, University of California E-58

Item #1

Allan Bakke v. The Regents of the University of California,

decision of the Supreme Court of the State of California

COPY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

SUPREME COURT
FILED
SEP 16 1976
G. E. BISHEL, Clerk

Deputy

ALLAN BAKKE,

Plaintiff, Cross-defendant and Appellant,

v.

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA,

Defendant, Cross-complainant and Appellant.

S.F. 23311

(Super. Ct. No. 31287)

In this case we confront a sensitive and complex issue: whether a special admission program which benefits disadvantaged minority students who apply for admission to the medical school of the University of California at Davis (hereinafter University) offends the constitutional rights of better qualified applicants denied admission because they are not identified with a minority. We conclude that the program, as administered by the University, violates the constitutional rights of nonminority applicants because it affords preference on the basis of race to persons who, by the University's own standards, are not as qualified for the study of medicine as nonminority applicants denied admission.

In 1973 and 1974, plaintiff Allan Bakke, a Caucasian, applied for admission to the University, which is supported by public funds. There were 2,644 applicants for the 1973 entering class and 3,737 for the 1974 class. Only 100 places are available each year, of which 16 are filled under the special admission program in dispute; applicants for the remaining 84 places are chosen by recourse to the normal admission process.[1/]

Bakke, who did not apply for consideration under the special program, was denied admission in both years, and was not admitted to any other medical school. He filed a complaint against the University seeking mandatory, injunctive, and declaratory relief to compel the University to admit him,[2/] alleging he was qualified for admission and the sole reason his application was rejected was that he was of the Caucasian race. The complaint also alleged that all

[1/] The determination that 16 students would be admitted under the special program was made by a resolution of the faculty of the medical school. Whether that figure was randomly selected, or has some rationale, is not revealed by the evidence.

[2/] He prayed for an alternative writ of mandate directing his admission, for an order compelling the Universi to show cause why it should not be enjoined from denying him admission, and for a declaration that he was entitled to admission.

SEE DISSENTING OPINION

students admitted under the special program were members of racial minorities, that the program applied separate, i.e., preferential, standards of admission as to them, and that the use of separate standards resulted in the acceptance of minority applicants who were less qualified for the study of medicine than Bakke and other nonminority applicants not selected. He claimed he had been the victim of invidious discrimination because of his race, in violation of the equal protection clause of the Fourteenth Amendment to the United States Constitution.

The University filed a cross-complaint for declaratory relief, seeking a determination that the special admission program was valid. The cross-complaint averred that the University considers the minority status of an applicant as only one factor in selecting students for admission, and that the purposes of the special program were to promote diversity in the student body and the medical profession, and to expand medical education opportunities to persons from economically or educationally disadvantaged backgrounds. The cross-complaint did not allege that Bakke should be denied relief because of laches.

The trial court, after considering the pleadings, the deposition and declaration of Dr. George H. Lowrey, the

associate dean of student affairs and chairman of the admissions committee, and the interrogatories submitted by the parties, found that the special admission program discriminated against Bakke because of his race and that he was entitled to have his application evaluated without regar to his race or the race of any other applicant. It found against the University on its cross-complaint for declarator relief. However, the court determined that Bakke was not entitled to an order for admission to the University because, although he was qualified to be admitted in both year in which he applied, he would not have been selected even if there had been no special program for minorities. Thus the court denied Bakke's prayer for an injunction ordering his admission.

Both parties appeal from the ensuing judgment--Bakke from the portion of the judgment denying him admissio and the University from the determination that the special admission program is invalid and that Bakke is entitled to have his application considered without regard to his race the race of any other applicant. Bakke renewed his application for admission subsequent to the judgment, but the University refused to evaluate his qualifications without r gard to the special admission program. We transferred the cause directly here, prior to a decision by the Court of

Appeal, because of the importance of the issues involved. (Cal. Const., art. VI, § 12; rule 20, Cal. Rules of Court.)

The Admission Procedure

An applicant for admission to the University is required to take the Medical College Admission Test, which measures accomplishment in four distinct areas--verbal, quantitative, general information, and science--and his score on this test is included in the application. The application also calls for a description of extracurricular and community activities, a history of the applicant's work experience, and his personal comments. In addition, the applicant is required to submit two letters of recommendation, usually one from a science teacher and one from a teacher in another discipline, and transcripts from schools previously attended.

In 1973, the application form inquired whether the applicant desired to be considered by a special committee which passed upon the applications of persons from economically and educationally disadvantaged backgrounds. The following year a revised form was adopted;[1/] instead of the question relating to disadvantage, the applicant was asked whether

1/ The change in the application form resulted when, in 1974, the University joined the American Medical College Application Service, which acts as a clearing house for applications to medical schools; it adopted the form prescribed by that organization.

he "describes" himself or herself as a "White/Caucasian" or a member of some other identifiable racial or ethnic group,[4/] and whether he wished to be considered an applicant from a minority group.

Although for 1974 and the years thereafter no specific question regarding disadvantage was mentioned on the application form, the material distributed by the University referred to a special program to increase opportunities for medical study for students from disadvantaged backgrounds, and between 1971 and 1974 both white and minority applicants applied for the special program.[5/]

[4/] The application specifically listed "Black/Afro-American, American Indian, Mexican/American or Chicano, Oriental/Asian-American, Puerto Rican (Mainland), Puerto Rican (Commonwealth), Cuban." There was a space labelled "Other" for those who belonged to a minority not enumerated.

[5/] The record is not clear as to how and to whom the material regarding the special admission program was distributed. The statement is headed "Program to Increase Opportunities in Medical Education for Disadvantaged Citizens," and reads in part:

"A special subcommittee of the Admissions Committee, comprised of faculty and medical students, evaluates applicants from economically and/or educationally disadvantaged backgrounds who request on the application form such an evaluation. Ethnic minorities are not categorically considered under the Task Force Program unless they are from disadvantaged backgrounds. Our goals are: 1) identification and recruitment of potential candidates for admission to medical school in the near future, and 2) stimulation of career interest in the health professions among junior high and high school students.

"After receiving all pertinent information, selected applicants will receive a letter inviting them to the School of Medicine in Davis for an interview. The interviews are conducted by at least one faculty member and one student membe

The selection of students for admission is conducted by two separate committees. The regular admission committee consists of a volunteer group of 14 or 15 faculty members and an equal number of students, all selected by the dean of the medical school.[6/] The special admission committee, which evaluates the applications of disadvantaged applicants only, consists of students who are all members of minority groups, and faculty of the medical school who are predominantly but not entirely minorities. Applications from those not classified as disadvantaged (including applications from minorities who do not qualify as disadvantaged) are screened through the regular admission process. The evaluation of the two groups is made independently, so that applicants considered by the special committee are rated only against one another and not against those considered in the regular admission process. All students admitted under the special program since its inception in 1969 have been members of minority groups.

E-4

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of the Task Force Subcommittee. Recommendations are then made to the full Admissions Committee. Task Force faculty are also members of the Admissions Committee. . . ."

6/ In 1973 there were more faculty members than students on this committee, but their numbers were equal in 1974.

The Regular Admission Program

Initially, members of the regular committee determine whether the applicant reflects sufficient promise to warrant a personal interview. Applicants with a college grade point average below 2.5 on a scale of 4.0 are summarily rejected, but a higher average does not necessarily guarantee that an interview will be afforded. In 1973, with 2,644 persons applying for admission, 815 applicants were selected for interviews under the regular program, and 462 interviews were granted in 1974 out of 3,737 applicants.

The interview sessions were conducted by one faculty member of the committee in 1973, but in 1974 each applicant was interviewed additionally by a student member. The interviewer prepares a summary of the meeting, reviews the file of the applicant, including his grade point average and his score on the Medical College Admission Test, and, after evaluating the applicant's potential contribution to the medical profession, grades him on a scale of 0 to 100. The applicant's file, including a summary of the interview but without the numerical score given by the interviewer, is then reviewed by four other committee members, two of whom are students and two faculty, chosen at random. These four independently rate the applicant on the same scale. The scores are totalled; in 1973 the highest score an applicant could achieve was 500, whereas in 1974--because

two interviews were conducted rather than only one--the highest score was 600.

This combined numerical rating is based upon an assessment of the applicant derived from information in his application, his letters of recommendation, the interview summary, test scores and grade point average, as well as a consideration of his motivation, character, imagination, and the type and locale of the practice he anticipates entering in the future. For example, because there is a shortage of doctors in the northern part of the state, and Davis is located in the north, some preference is given to applicants from that area who plan to remain there to practice.[1/] The combined numerical rating is used as a "benchmark" for selection, although exceptions to strict numerical ranking may be made in special circumstances. For example, the University makes an exception in the unusual case of an applicant whose combined rating was "quite high" but not sufficient for admission but who is married to an applicant previously accepted.

Some attrition in acceptances normally occurs each year, and applicants whose ratings approximate those admitted may be placed on an alternate list. The dean of admissions

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1/ Bakke does not challenge the preference accorded to applicants from the northern part of the state, nor does he claim that he would have been admitted but for that preference. Indeed, the record does not indicate that any applicant in 1973 or 1974 was granted a preference because he planned to practice in Northern California.

has the discretion to select for the list applicants whose ratings will bring special skills or balance to the entering class; therefore not all unaccepted applicants with high ratings are placed on the list, and those who are so placed are not necessarily listed in order of numerical rating. Two out of three applicants offered admission under the regular procedure ultimately enroll at the University.

The Special Admission Program

The faculty chairman of the special admission committee initially screens the applications of those who seek to enter the University as disadvantaged students, to determine if they may properly be classified as disadvantaged.[8/] Those who do not qualify as disadvantaged are referred to the regular admissions committee. If a candidate passes this initial scrutiny, his application is reviewed by the special committee for the purpose of determining whether he should be invited for a personal interview. In making this determination the special committee, unlike the regular committee, does not automatically disqualify an applicant who has a grade point average below 2.5.

[8/] The chairman determines whether an applicant is disadvantaged by examining his application for such clues as whether he has been granted a waiver of the application fee, which requires a means test, whether he had in the past participated in programs for the disadvantaged, whether he worked during school, and the occupational background and education of his parents.

The committee interviewed 71 out of 297 disadvantaged applicants in 1973 and 88 out of 628 in 1974. The interview is conducted by one faculty member and one student member of the special committee. The file is then reviewed by other members of the special committee, who rate the applicant.

The special committee prepares a written summary of the qualifications of the disadvantaged applicants whom it recommends for admission, and the regular committee makes the actual determination whether to accept the recommendation. In practice, the special committee's recommendations are generally followed. The process of recommendation by the special committee and acceptance by the general committee continues until 16 applicants have been admitted under the special program.

Bakke had a grade point average of 3.51, and his scores on the verbal, quantitative, science, and general information portions of the Medical College Admission Test (expressed in percentiles) were 96, 94, 97 and 72 respectively. His application warranted an interview in both years for which he applied. In 1973, his combined numerical rating was 468 out of a possible 500, and in

1974 it was 549 out of a possible 600. He was not placed on the alternate list in either year.

Some minority students who were admitted under the special program in 1973 and 1974 had grade point averages below 2.5, the minimum required for an interview for those who did not qualify under the special program; some were as low as 2.11 in 1973 and 2.21 in 1974. According to Dr. Lowrey, if an applicant scored lower than the 50th percentile in the science and verbal portions of the Medical College Admission Test, the committee "would look very hard at other things that would be positive" such as motivation, or some explanation for his low scores. The mean percentage scores on the test of the minority students admitted to the 1973 and 1974 entering classes under the special program were below the 50th percentile in all four areas tested. In addition, the combined numerical ratings of some students admitted under the special program were 20 to 30 points below Bakke's rating.

Dr. Lowery stated in his declaration and deposition that the special admission program was designed to afford preferential treatment to persons who are from disadvantaged backgrounds. He stated further that test scores and grades of minority applicants do not necessarily reflect their capabilities, because their low scores might be

attributable to the fact that they were required to work during the school year or that they lacked the reinforcement and support which white middle-class students typically derive from their families, and without such a program, few minorities would qualify for admission to the University. A major purpose of the program, he asserted, was to promote diversity among the student body and the profession and to increase the number of doctors practicing in the minority community, where the need is great.

The trial court found that although the special admission program purports to be open to "educationally or economically disadvantaged" students, and although in 1973 and 1974 some applications for the program were received from members of the white race, only minority students had been admitted under the program since its inception, and members of the white race were barred from participation. The court concluded that the program constitutes invidious discrimination in favor of minority races and against Bakke and others whose applications were evaluated under the regular admission procedure, in violation of their rights under the Fourteenth Amendment to the United States Constitution. The University does not challenge the trial court's finding that applicants who are not members of a minori are barred from participation in the special admission program.

E-7

The Appeal of the University

The validity of preferential admission to professional school for minorities was before the United States Supreme Court in De Funis v. Odegaard, which involved a program at the University of Washington law school. However, after granting certiorari (414 U.S. 1038) the high court determined, over the dissent of four justices, that the case was moot, and vacated the judgment of the Washington Supreme Court (416 U.S. 312.)[2/]

2/ The program involved in De Funis was in some respects similar to the one in the present case. There, as here a white student who was denied admission claimed that the program violated his rights under the Fourteenth Amendment. The trial court ruled in his favor, but its judgment was reversed by the Washington Supreme Court, which found a compelling state interest in integration of the school and the professio (De Funis v. Odegaard (Wash. 1973) 507 P.2d 1169, 1182.)

The United States Supreme Court determined that the case was moot because De Funis had later been admitted to the law school, and was about to graduate. It vacated the Washington judgment and remanded the case for such proceeding as the Washington Supreme Court might deem appropriate. Just Douglas wrote a separate dissenting opinion on the merits (41 U.S. 320), and joined Justices White and Marshall in Justice Brennan's opinion that the case was not moot (id. at p. 348).

Upon remand, four justices of the Washington Supreme Court were of the opinion that the court's prior decision should be reinstated. However, this view failed to command a majority. Three other justices, without considering the merits, determined that dismissal of the complaint was mandatory because the United States Supreme Court had vacated the prior judgment. Two justices, who had dissented from the cou original decision upholding the validity of the preferential program, again dissented. Although they were of the view tha the case should not be dismissed, they reiterated the opinion they had previously expressed that the preferences afforded t minority groups were unconstitutional. (De Funis v. Odegaard (Wash. 1974) 529 P.2d 438, 445, 448.)

The question before us has generated extraordinary interest in academia, as well as a proliferation of debate among legal writers and commentators. (See, for a more literary sampling, Redish, Preferential Law Admissions (1974) 22 UCLA L.Rev. 343; De Funis Symposium (1975) 75 Colum.L.Rev. 483; Sandalow, Racial Preferences: The Judicial Role (1975) 42 U.Chi.L.Rev. 653; Symposium, De Funis: The Road Not Taken (1974) 60 Va.L.Rev. 917; Ely, Reverse Racial Discrimination (1974) 41 U.Chi.L.Rev. 723; O'Neil, Preferential Admissions (1971) 80 Yale L.J. 699; Graglia, Special Admission to Law School (1970) 119 U.Pa.L.Rev. 351; Ginger (edit.), De Funis versus Odegaard and the University of Washington (1974); Cohen, The De Funis Case: Race and The Constitution, The Nation (Feb. 8, 1975) 135; O'Neil, Discriminating Against Discrimination (1975).) No fewer than 26 amici curiae briefs were filed in the United States Supreme Court in De Funis. Indeed, Justice Brennan, dissenting in De Funis from the determination of mootness, remarked that "[F]ew constitutional questions in recent history have stirred as much debate . . . ." (416 U.S. at p. 350.)

We note at the outset that a number of social scientists and anthropologists deem "race" to be an anachronistic concept; Ashley-Montagu has termed it mischievous and retardive. Many experts consider "ethnic" to be more accurate since it relates to characteristics of groups that may

be, in different proportions, physical, national, cultural, linguistic, religious or ideological. Unfortunately lexicon is imprecise and until an improved taxonomy emerges we shall probably be compelled to discuss problems such as that before us in terms of race. (See, e.g., Allport, The Nature of Prejudice (1954) pp. xv-xvi.)

We also observe preliminarily that although it is clear that the special admission program classifies applicants by race, this fact alone does not render it unconstitutional. Classification by race has been upheld in a number of cases in which the purpose of the classification was to benefit rather than to disable minority groups.

Thus, such classifications have been approved to achieve integration in the public schools (Swann v. Board of Education (1971) 402 U.S. 1; San Francisco Unified School Dist. v. Johnson (1971) 3 Cal.3d 937, 950-951), to require a school system to provide instruction in English to students of Chinese ancestry (Lau v. Nichols (1974) 414 U.S. 563),[10/] and to uphold the right of certain non-English speaking persons to vote (Katzenbach v. Morgan (1966) 384 U.S. 641; Castro v. State of California (1970) 2 Cal.3d 223). These cases differ from the special admission program in at least one

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[10/] Lau was decided under section 601 of the Civil Rights Act of 1964 (42 U.S.C. § 2000d).

critical respect, however. In none of them did the extension of a right or benefit to a minority have the effect of depriving persons who were not members of a minority group of benefits which they would otherwise have enjoyed.

The University suggests that this distinction is not apposite with respect to the school integration decisions because the effort to integrate schools discommodes nonminorities by requiring some to attend schools in neighborhoods other than their own. We cannot accept this as a valid analogy. Whatever the inconveniences and whatever the techniques employed to achieve integration, no child is totally deprived of an education because he cannot attend a neighborhood school, and all students, whether or not they are members of a minority race, are subject to equivalent burdens. As the Supreme Court has said numerous times since Brown v. Board of Education (1954) 347 U.S. 483, there is no right to a segregated education. The disadvantages suffered by a child who must attend school some distance from his home or is transferred to a school not of his qualitative choice cannot be equated with the absolute denial of a professional education, as occurred in the present case.

It is plain that the special admission program denies admission to some white applicants solely because of

their race.[11/] Of the 100 admission opportunities available in each year's class, 16 are set aside for disadvantaged minorities, and the committee admits applicants who fall into this category until these 16 places are filled. Since the pool of applicants available in any year is limited, it is obvious that this procedure may result in acceptance of minority students whose qualifications for medical study, under the standards adopted by the University itself, are inferior to those of some white applicants who are rejected.

This situation occurred in 1973 and 1974. The combined numerical rating assigned by the committee to each applicant who is granted an interview includes not only an evaluation of his academic scores but an assessment of all factors which the committee considers relevant to the successful pursuit of medical studies, such as an applicant's motives, character, and academic grades. This combined rating, with a few special exceptions, serves as the "benchmark" for admission.

[11/] The dissent states that whites are not excluded on racial grounds because the great majority of the applicants accepted are white. However, the fact that not all whites are excluded because of their race does not mean that some of them do not suffer such discrimination. In any event, Bakke alleges that he was excluded because he was white, and that the special admission program is unconstitutional for that reason; it is to this issue which we must address ourselves.

The dissent speaks of the majority's "disproportionate advantage" (post, p. ___*), but it fails to suggest how Bakke, rejected by the medical school, enjoys disproportionate or any advantage.

*Multilith opinion, page 24.

The dissent charges that the combined numerical rating of an applicant does not include all his qualifications because it does not contain one factor favorable to disadvantaged minority applicants, i.e., their race or ethnic background. This suggestion is based upon the theory of the dissent that minority status in and of itself constitutes a substantive qualification for medical study and that, therefore, the fact that the combined numerical rating of a minority applicant accepted for admission was lower than the rating of a white rejected for admission does not mean that the minority applicant was less qualified than the white student. (Post, p. __, fn. 11.[8]) But this argument simply assumes the answer to the question at issue. Bakke claims that minority status is not a relevant consideration in determining whether an applicant is qualified for admission, and that admission decisions must be made without regard to the racial or ethnic background of a prospective student. To accept at the outset the premise that a minority applicant may be better qualified because of his race would foreclose consideration of the constitutional issue raised by the complaint.

The rating of some students admitted under the special program in 1973 and 1974 was as much as 30 points

[8]Multilith opinion, page 38, footnote 11; pages 43-

below that assigned to Bakke and other nonminority applicants denied admission. Furthermore, white applicants in the general admission program with grade point averages below 2.5 were, for that reason alone, summarily denied admission, whereas some minority students in the special program were admitted with grade point averages considerably below 2.5. In our view, the conclusion is inescapable that at least some applicants were denied admission to the medical school solely because they were not members of a minority race.

The fact that all the minority students admitted under the special program may have been qualified to study medicine does not significantly affect our analysis of the issues. In the first place, as the University freely admits, Bakke was also qualified for admission, as were hundreds, if not thousands of others who were also rejected. In this context the only relevant inquiry is whether one applicant was more qualified than another. Secondly, Bakke alleged that he and other nonminority applicants were <u>better</u> qualified for admission than the minority students accepted under the special admission program, and the question we must decide is whether the rejection of better qualified applicants on racial grounds is constitutional.

The issue to be determined thus narrows to whether a racial classification which is intended to assist minoritie

but which also has the effect of depriving those who are not so classified of benefits they would enjoy but for their race, violates the constitutional rights of the majority.[12/]

Two distinct inquiries emerge at this point; first, what test is to be used in determining whether the program violates the equal protection clause; and second, does the program meet the requirements of the applicable test.

The general rule is that classifications made by government regulations are valid "if any state of facts reasonably may be conceived" in their justification. (McGowan v. Maryland (1966) 366 U.S. 420, 426.) This yardstick generally called the "rational basis" test, is employed in a variety of contexts to determine the validity of government action (e.g., Village of Belle Terre v. Boraas (1974) 416 U.S. 1, 8; Dandridge v. Williams (1970) 397 U.S. 471, 485) and its use signifies that a reviewing court will strain to find any legitimate purpose in order to uphold the propriety of the state's conduct.

E-11

But in some circumstances a more stringent standard is imposed. Classification by race is subject to strict

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12/ We question the characterization by the dissent of racial classifications which favor minorities as "benign." That description in the present context is deemed to mean "favorable"; and while there can be no doubt that the special admission program is favorable to minorities, it certainly cannot be said to favor the majority. As the Washington Supreme Court forthrightly declared in its original opinion, ". . . the minority admissions policy is certainly not benign with respect to nonminority students who are displaced by it." (De Funis v. Odegaard, supra, 507 P.2d 1169, at p. 1182.)

scrutiny, at least where the classification results in detriment to a person because of his race.[13] In the case of such a racial classification, not only must the purpose of the classification serve a "compelling state interest," but it must be demonstrated by rigid scrutiny that there are no reasonable ways to achieve the state's goals by means which impose a lesser limitation on the rights of the group disadvantaged by the classification. The burden in both respects is upon the government. (E.g., Dunn v. Blumstein (1972) 405 U.S. 330, 342-343; Loving v. Virginia (1967) 388 U.S. 1, 11; McLaughlin v. Florida (1964) 379 U.S. 184, 192-193.) It has been more than three decades since any decision of the United States Supreme Court upheld a classification which resulted in detriment solely on the basis of race: Korematsu v. United States (1944) 323 U.S. 214, and Hirabayashi v. United States (1943) 320 U.S. 81, both of which were war-inspired cases that have been severely criticized subsequently.[14]

The University asserts that the appropriate standard to be applied in determining the validity of the

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[13] In some of the cases cited above, in which a benefit to one racial group did not cause detriment to another the United States Supreme Court has employed the more lenient "rational basis" test. (E.g., Katzenbach v. Morgan, supra, 384 U.S. 641, 651, 657-658.)

[14] E.g., Rostow, The Japanese-American Cases--A Disaster (1945) 54 Yale L.J. 489.

special admission program is the more lenient "rational basis" test. It contends that the "compelling interest" measure is applicable only to a classification which discriminates against a minority, reasoning that racial classifications are suspect only if they result in invidious discrimination (e.g., Brown v. Board of Education, supra, 347 U.S. 483, 494); and that invidious discrimination occurs only if the classification excludes, disadvantages, isolates, or stigmatizes a minority or is designed to segregate the races. The argument is that white applicants denied admission are not stigmatized in the sense of having cast about them an aura of inferiority; therefore, it is sufficient if the special admission program has a rational relation to the University's goals.

3-12

We cannot agree with the proposition that deprivation based upon race is subject to a less demanding standard of review under the Fourteenth Amendment if the race discriminated against is the majority rather than a minority. We have found no case so holding,[15/] and we do not hesitate to reject the notion that racial discrimination may be more easily justified against one race than another, nor can we

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15/ Alevy v. Downstate Medical Center (1976) 384 N.Y. Supp.2d 82, which involved the constitutionality of a preferential admission program, contains language by way of dictum that the appropriate test in deciding the constitutionality of such a program is neither of the two discussed above, but a third standard which the court claimed is gradually evolving in recent decisions of the United States Supreme Court. We discuss this case infra.

permit the validity of such discrimination to be determined by a mere census count of the races.[16/]

That whites suffer a grievous disadvantage by reason of their exclusion from the University on racial grounds is abundantly clear. The fact that they are not also invidiously discriminated against in the sense that a stigma is cast upon them because of their race, as is often the circumstance when the discriminatory conduct is directed against a minority, does not justify the conclusion that race is a suspect classification only if the consequences of the classification are detrimental to minorities.

Regardless of its historical origin, the equal protection clause by its literal terms applies to "any person,"[17/]

[16/] A convincing refutation of the University's argument is made by a commentator as follows: "The argument that a racial classification which discriminates against white people is not inherently suspect implies that the white majority is monolithic and so politically powerful as not to require the constitutional safeguards afforded minority racial groups. But the white majority is pluralistic, containing within itself a multitude of religious and ethnic minorities--Catholics, Jews, Italians, Irish, Poles--and many others who are vulnerable to prejudice and who to this day suffer from the effects of past discrimination. Such groups have only recently begun to enjoy the benefits of a free society and should not be exposed to new discriminatory bars, even if they are raised in the cause of compensation to certain racial minorities for past inequities." (Lavinsky, De Funis Symposium (1975) 75 Colum.L.Rev. 520, 527.)

[17/] The Supreme Court has emphasized that "The rights created by the first section of the Fourteenth Amendment are, by its terms, guaranteed to the individual. The rights established are personal rights. It is, therefore, no answer to these petitioners to say that the courts may also be induced to deny white persons rights of ownership and occupancy on the grounds of race or color. Equal protection of the laws is not achieved through indiscriminate imposition of inequalities." (Shelley v. Kraemer (1948) 334 U.S. 1, 22.)

and its lofty purpose, to secure equality of treatment to all, is incompatible with the premise that some races may be afforded a higher degree of protection against unequal treatment than others.

Although there are no decisions of the United States Supreme Court directly in point, recent decisions of the high court demonstrate a marked reluctance to apply different standards to determine the rights of minorities and members of the majority. Thus, in McDonald v. Santa Fe Trail Transportation Co. (1976) 44 U.S.L.Week 5067, the court held that title VII and section 1981 of title 42 of the United States Code prohibit discrimination against all races on the same terms. Significantly, the court relied upon the broad language of these statutes, which protect "any individual" and "all persons" from discrimination. Indeed, in spite of the fact that section 1981 states that "all persons . . . shall have the same right in every State . . . to make and enforce contracts . . . as is enjoyed by white citizens" (emphasis added), and that the "immediate impetus" for the statute upon which section 1981 was based "was the necessity for further relief of the Constitutionally emancipated former Negro slaves" the court found that the history of the measure justified the conclusion that it was intended to apply on

E-13

equal terms to all races.[18]

We come, then, to the question whether the University has demonstrated that the special admission program is necessary to serve a compelling governmental interest and that the objectives of the program cannot reasonably be achieved by some means which would impose a lesser burden on the rights of the majority.

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[18] Although the Fourteenth Amendment was originally enacted to secure the freedom and equality of blacks, its protection has been extended to other races as well, and members of all races share in the protection afforded by that provision. (Yick Wo v. Hopkins (1885) 118 U.S. 356, 369; Slaughter-House Cases (1872) 83 U.S. 36, 71-72.) Some statements of the United States Supreme Court imply that all racial classifications which result in a detriment are measured by the "compelling interest" test. (E.g., Hirabayashi v. United States, supra, 320 U.S. 81, 100; Loving v. Virginia, supra, 388 U.S. 1, 9; McLaughlin v. Florida, supra, 379 U.S. 184, 191-192; but see Korematsu v. United States, supra, 323 U.S. 214, 216; Wright, The Supreme Court (1968) 54 Cornell L.Rev. 1, 18; Ely, Reverse Racial Discrimination (1974) 41 U.Chi.L.Rev. 732, 727-735.)

Ely suggests that classification by race is not suspect if a member of the majority race discriminates against others of the same race because the majority is not likely to underestimate the needs and qualifications of persons of the same race and because the discrimination would not be motivated by racial prejudice. We find wholly unacceptable the notion that racial discrimination may be more readily justified because the persons who make the decision to discriminate belong to the same racial group as the person discriminated against. The right to equal protection of the laws is personal (Shelley v. Kraemer, supra, 334 U.S. at p. 22; Mitchell v. United States (1941) 313 U.S. 80, 97). Surely the complexion of the person who discriminates cannot be a significant factor in deciding whether an individual has been deprived of his right to equal protection.

The University seeks to justify the program on the ground that the admission of minority students is necessary in order to integrate the medical school and the profession.[19] The presence of a substantial number of minority students will not only provide diversity in the student body, it is said, but will influence the students and the remainder of the profession so that they will become aware of the medical needs of the minority community and be encouraged to assist in meeting those demands.[20] Minority doctors will, moreover, provide role models for younger persons in the minority community, demonstrating to them that they can overcome the residual handicaps inherent from past discrimination.

Furthermore, the special admission program will assertedly increase the number of doctors willing to serve the minority community, which is desperately short of physicians. While the University concedes it cannot guarantee that all the applicants admitted under the special program

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[19] The total number of blacks, Mexican-Americans, American Indians, and mainland Puerto Ricans enrolled in medical schools between 1969 and 1974 was only 8 percent. (Assn. of American Medical Colleges, Medical School Admission Requirements (1976) Table 6-C, p. 52.)

[20] No one can gainsay the premise that a university is more than an edifice of classrooms; it is a composite intellectual atmosphere to which both the faculty and students contribute substantially.

will ultimately practice as doctors in disadvantaged communities, they have expressed an interest in serving those communities and there is a likelihood that many of them will thus fashion their careers.

Finally, it is urged, black physicians would have a greater rapport with patients of their own race and a greater interest in treating diseases which are especially prevalent among blacks, such as sickle cell anemia, hypertension, and certain skin ailments.

We reject the University's assertion that the special admission program may be justified as compelling on the ground that minorities would have more rapport with doctors of their own race and that black doctors would have a greater interest in treating diseases prevalent among blacks. The record contains no evidence to justify the parochialism implicit in the latter assertion; and as to the former, we cite as eloquent refutation to racial exclusivity the comment of Justice Douglas in his dissenting opinion in De Funis: "The Equal Protection Clause commands the elimination of racial barriers, not their creation in order to satisfy our theory as to how society ought to be organized. The purpose of the University of Washington cannot be to produce black lawyers for blacks, Polish lawyers for Poles, Jewish lawyers for Jews, Irish lawyers for Irish. It should be to produce good lawyers for Americans . . . ." (416 U.S. at p. 342.)

We may assume arguendo that the remaining objectives which the University seeks to achieve by the special admission program meet the exacting standards required to uphold the validity of a racial classification insofar as they establish a compelling governmental interest. Nevertheless, we are not convinced that the University has met its burden of demonstrating that the basic goals of the program cannot be substantially achieved by means less detrimental to the rights of the majority.

The two major aims of the University are to integrate the student body and to improve medical care for minorities. In our view, the University has not established that a program which discriminates against white applicants because of their race is necessary to achieve either of these goals.

E-15

It is the University's claim that if special consideration is not afforded to disadvantaged minority applicants, almost none of them would gain admission because, no matter how large the pool of applicants, the grades and test scores of most minority applicants are lower than those of white applicants. In support of this assertion, the University declared that in the two years before the special admission program was instituted, only two blacks and one Mexican-American qualified for admission, whereas between 1970 and 1974, while the program was in operation, 33 Mexican-Americans,

26 blacks, and 1 American Indian were admitted.[21] But this showing is insufficient to satisfy the University's burden. For there is no evidence as to the nature of the admission standards prior to 1969, when the special admission program began, and it may well be that virtually determinative weight was accorded to test scores and grades. Thus the fact that few minorities were accepted before 1969 was not necessarily the result of the absence of a preference for minorities on strictly racial grounds.

We observe and emphasize in this connection that the University is not required to choose between a racially neutral admission standard applied strictly according to grade point averages and test scores, and a standard which accords preference to minorities because of their race.

While minority applicants may have lower grade point averages and test scores than others, we are aware of no rule of law which requires the University to afford determinative weight in admissions to these quantitative factors. In practice, colleges and universities generally consider matters other than strict numerical ranking in admission decisions. (O'Neil, Preferential Admissions (1971) 80 Yale L.J. 699, 704-705.) The University is entitled to consider, as it does with respect to

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21/ Six Mexican-Americans, 1 black, and 41 Asians were admitted between 1970 and 1974 without the aid of the program, and 12 Asians were admitted under the program.

applicants in the special program, that low grades and test scores may not accurately reflect the abilities of some disadvantaged students; and it may reasonably conclude that although their academic scores are lower, their potential for success in the school and the profession is equal to or greater than that of an applicant with higher grades who has not been similarly handicapped.[22/]

In addition, the University may properly as it in fact does, consider other factors in evaluating an applicant, such as the personal interview, recommendations, character, and matters relating to the needs of the profession and society, such as an applicant's professional goals. In short, the standards for admission employed by the University are not constitutionally infirm except to the extent that they are utilized in a racially discriminatory manner. Disadvantaged applicants of all races must be eligible for sympathetic consideration, and no applicant may be rejected because of his race,

E-16

[22/] The view that minority enrollment may be increased by revising admission standards to focus on the disadvantaged has been criticized on the ground that without racially discriminatory programs, a very large increase in the percentage of disadvantaged students accepted for admission would be required in order to achieve substantial integration, resulting in the exclusion of significant numbers of the most talented applicants. (Sandalow, Racial Preferences: The Judicial Role (1975) 42 U.Chi.L.Rev. 653, 690-691.) We note, however, that of the total number of students who applied for the special admission program, only one in five was white.

in favor of another who is less qualified, as measured by standards applied without regard to race.[23] We reiterate, in view of the dissent's misinterpretation, that we do not compel the University to utilize only "the highest objective academic credentials" as the criterion for admission.

In addition to flexible admission standards, the University might increase minority enrollment by instituting aggressive programs to identify, recruit, and provide remedial schooling for disadvantaged students of all races who are interested in pursuing a medical career and have an evident talent for doing so.

Another ameliorative measure which may be considered is to increase the number of places available in the medical schools, either by allowing additional students to enroll in existing schools or by expanding the schools. In 1974, the University received almost 20 applications for each place available, and the entering class in all the medical schools in the state in the last academic year totalled only 1,094 students. (Assn. of American Medical Colleges, Medical School Admission Requirements (1976) table 2-B, pp. 11-12.)

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[23] Justice Douglas in his opinion in De Funis adopts a similar rationale. He states, "There is no constitutional right for any race to be preferred . . . . There is no superior person by constitutional standards. A De Funis who is white is entitled to no advantage by reason of that fact; nor is he subject to any disability no matter what his race or color. Whatever his race, he had a constitutional right to have his application considered on its individual merits in a racially neutral manner." (416 U.S. at pp. 336-337.)

None of the foregoing measures can be related to race, but they will provide for consideration and assistance to individual applicants who have suffered previous disabilities, regardless of their surname or color. So far as the record discloses, the University has not considered the adoption of these or other nonracial alternatives to the special admission program.

Whether these measures, taken together, will result in the enrollment of precisely the same number of minority students as under the current special admission program, no one can determine. It may be that in some years there would be fewer and in some years more minorities enrolled than under the present scheme. But even if somewhat fewer minority applicants are admitted without a program which focuses on race, the University has not shown that the second major objective of the program--the need for more doctors to serve the minority community--will be appreciably impaired. This shortage is perhaps the most serious of the problems which the University seeks to correct by means of its program. According to statistics cited by the University and amici curiae, the National Lawyers Guild and the Mexican-American Legal Defense Fund, blacks and other races have a life expectancy of 6.3 years less than whites, their maternal mortality rate is three times higher than that of whites, and their infant mortality

E-17

is almost twice as high. (U.S. Dept. of Commerce, Bureau of the Census, Current Population Reports: The Social and Economic Status of the Black Population in the U.S. (1974) tables 82, 84.) We do not doubt that that amelioration of this societal infirmity is one of the most urgent tasks of the medical schools and the medical profession.

We question, however, whether the University has established that the special admission program is the least intrusive or even the most effective means to achieve this goal. The University concedes it cannot assure that minority doctors who entered under the program, all of whom expressed an "interest" in practicing in a disadvantaged community, will actually do so. It may be correct to assume that some of them will carry out this intention, and that it is more likely they will practice in minority communities than the average white doctor. (See Sandalow, Racial Preferences: The Judicial Role (1975) 42 U.Chi.L.Rev. 653, 688.) Nevertheless, there are more precise and reliable ways to identify applicants who are genuinely interested in the medical problems of minorities than by race. An applicant of whatever race who has demonstrated his concern for disadvantaged minorities in the past and who declares that practice in such a community is his primary professional goal would be more likely to contribute to alleviation of the medical shortage than one who is chosen entirely on the basis of race and disadvantage. In short, there is no empirical data to

demonstrate that any one race is more selflessly socially oriented or by contrast that another is more selfishly acquisitive.

Moreover, while it may be true that the influence exerted by minorities upon the student body and the profession will persuade some nonminority doctors to assist in meeting these community medical needs, it is at best a circuitous and uncertain means to accomplish the University's objective. It would appear that more directly effective methods can be devised, such as academic and clinical courses directed to the medical needs of minorities, and emphasis upon the training of general practitioners to serve the basic needs of the poor.[24/]

The University cites certain cases in support of its position. A substantial number of decisions, most of

E-18

[24/] According to one study, a major problem with the health care system is the "gross misallocation of sophisticated medical talent, distortions that reflect the attractions of income, not the attractions to service . . . . [T]he highest paid serve those areas which, by all standards, are already saturated with service . . . . The problem is not volume of service, but distribution of service. The system has been described as a mixture of technical virtuosity among specialists, on the one hand, with inadequacies in the development of minimum essential care on the other." (Sultan & Therrio, Cal. Health Manpower, Need to 1980, Cal. Regional Medical Program, Oakland, 1974.) Other commentators have estimated that while there are 85 specialists practicing for each 100,000 Californians, 66 specialists would represent an adequate distribution; and that there are only 34 general practitioners serving the same population, whereas 50 would be required for an adequate level of care. (Paxton, Doctor Shortage? It's Narrowing Down to Primary Care, Medical Economics (Mar. 1973) p. 104; O'Sullivan, The Health Manpower Sourcebook (Health Services Education Council, San Jose, 1973, p. 3.11).)

them determined under title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e et seq.) have upheld the right of minorities to preference in employment. (E.g., Franks v. Bowman Transportation, Inc. (1976) 44 U.S.L.Week 4356; United States v. Masonry Cont. Assn. of Memphis, Inc. (6th Cir. 1974) 497 F.2d 871, 874, 877; NAACP v. Allen (5th Cir. 1974) 493 F.2d 614, 617, 622; Carter v. Gallagher (8th Cir. 1971) 452 F.2d 315, 318, 331; United States v. Ironworkers Local 86 (9th Cir. 1971) 443 F.2d 544, 548, 554.) The University asserts that these decisions establish the validity of a preference to minorities on the basis of race even if the classification results in detriment to the majority.

The authorities are not persuasive. In all these cases the court found that the defendant had practiced discrimination in the past and that the preferential treatment of minorities was necessary to grant them the opportunity for equality which would have been theirs but for the past discriminatory conduct. Absent a finding of past discrimination--and thus the need for remedial measures to compensate minorities for the prior discriminatory practices of the employer--the federal courts, with one exception, have held that the preferential treatment of minorities in employment is invalid on the ground that it deprives a member of the

majority of a benefit because of his race.[25] (Chance v. Board of Examiners (2d Cir. 1976) 44 U.S.L.Week 2343; Kirkland v. New York St. Dept. of Correctional Serv. (2d Cir. 1975) 520 F.2d 420, 427-428; Weber v. Kaiser Aluminum & Chemical Corp. (E.La. 1976) 45 U.S.L.Week 2018; Brunetti v. City of Berkeley (N.D.Cal. 1975) H C-74-0051 RPP;[26] Anderson v. San Francisco Unified School District (N.D.Cal. 1973) 357 F.Supp. 248, 250.)[27]

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[25] The dissent challenges this statement as overbroad, claiming that a number of cases have compelled "affirmative action" in the employment context, absent a showing that a particular employer has engaged in racial discrimination in the past. In fact, in all the federal cases cited by the dissent for this proposition (post, p. ___, fn. 6*), there was a finding by either a court or an administrative agency that the labor unions which supplied employees to the employer had been guilty of discriminatory practices. In Weiner v. Cuyahoga Community College District (Ohio 1969) 249 N.E.2d 907, the employer was required only to give "unequivocal assurance of positive equal employment opportunity efforts" and was not called upon to assure that a certain percentage of persons hired would be from the minority community.

Furthermore, the dissent erroneously claims that Washington v. Davis, 44 U.S.L.Week 4789, stands for the proposition that "benign" racial classifications are constitutional. (Post, p. ___.**) That case holds only that affirmative efforts of the Washington, D.C. police department to recruit black officers negates any inference that the department was guilty of discrimination.

[26] Brunetti is not published in federal reports.

[27] The University attempts to distinguish Anderson on the ground that the regulations in that case would have resulted in according a preference to minorities for almost all the administrative assignments and promotions, whereas here only 16 out of 100 places are reserved for minorities. But Anderson is not so easily distinguishable. The opinion leaves no doubt that the reason for striking down the regulation was not that an excessive number of minorities was preferred over whites, but that they were preferred at all absent

*Multilith opinion, page 16, footnote 6.

**Multilith opinion, page 17.

E-19

It is important to observe that all of these cases, with the exception of Weber, hold that it is unconstitutional reverse discrimination to grant a preference to a minority employee in the absence of a showing of prior discrimination by the particular employer granting the preference. Obviously, this principle would apply whether the preference was compelled by a court or voluntarily initiated by the employer. Moreover, Brunetti, Anderson and Weber all invalidated voluntary programs of preference for minorities.[28/] Thus, there is no merit

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a finding that the defendant had been guilty of prior discriminatory conduct.

The sole exception to the rule stated above is Porcelli v. Titus (3d Cir. 1970) 431 F.2d 1254. In that case, the board of education abolished the list previously used to promote employees to the position of principal or vice-principal in the Newark school system. The persons on the list had been chosen by competitive examination. Instead of utilizing the list, the promotions were made by the school board upon recommendation of the superintendent of schools, who used the race of a candidate as one factor in making his recommendations. He asserted that the system of making promotions from the list was outmoded because the number of minority students in the schools had increased dramatically since the system was adopted and that the academic performance of the students would be enhanced by an increase in the number of minority principals and vice principals. The teachers at the top of the list, who had been denied promotion, asserted that their constitutional rights had been violated. The court found against them, reasoning that the purpose of abolishing the promotional list was to integrate the faculty rather than to discriminate against the plaintiffs. The decision, with little discussion, applied the integration rationale of Brown v. Board of Education, without recognizing the distinction between a classification which grants a benefit to one race at the expense of another and one which does not have that effect. This decision cannot be harmonized with the other federal decisions cited above, with which it is clearly in conflict, and we do not find its reasoning persuasive.

28/ For example, in Brunetti, the justification for the preference was a "history of discriminatory practices throughout all segments of American society" but the program was held to be invalid because there was no determination that the city had previously engaged in discriminatory practices, and in fact, the city consistently maintained, as does the University in the present case, that it had never discriminated against minorities.

is the assertion of the dissent that there is some undefined constitutional significance to the fact that the University elected to adopt the special admission program and was not compelled to do so by court order. To the victim of racial discrimination the result is not noticeably different under either circumstance.

There is no evidence in the record to indicate that the University has discriminated against minority applicants in the past. Nevertheless amici curiae ask that we find, by analogy to the employment discrimination cases, that the University's reliance on grade point averages and the Medical College Admission Test in evaluating applicants amounted to discrimination in fact against minorities. Amici claim that the application of these quantitative measures by the University had resulted in the exclusion of a disproportionate number of minority applicants, that grades and test scores are not significantly related to a student's performance in medical school or in the profession, and that the test is culturally biased. In the recent case of Washington v. Davis, supra, 44 U.S.L.week 4789, the United States Supreme Court has made it clear that the standard for adjudicating claims of racial discrimination on constitutional grounds is not the same as the standard applicable to cases decided under title VII, and that absent a racially

E-20

discriminatory purpose, a test is not invalid solely because it may have a racially disproportionate impact. Thus, the fact that minorities are underrepresented at the University would not suffice to support a determination that the University has discriminated against minorities in the past. (See also Tyler v. Vickery (5th Cir. 1974) 517 F.2d 1089, 1095.) In any event, we are not called upon to decide the issue raised by amici in the present case. Neither party contended in the trial court that the University had practiced discrimination, and no evidence with regard to that question was admitted below.[29/] Thus, on the basis of the record before us, we must presume that the University has not engaged in past discriminatory conduct.

The University relies upon Alevy v. Downstate Medical Center, supra, 384 N.Y.Supp.2d 82. There, as here, a white medical student alleged that he had been discriminated against in admission to a publicly funded medical school because of preferences accorded to black and Puerto Rican applicants in the admission program. Although the court found that the school had discriminated in favor of the minority applicants, it did not decide whether the preference was constitutional. Rather, it held that the petitioner did not demonstrate his right to relief

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[29/] Admittedly, neither the University nor Bakke would have an interest in raising such a claim. But this fact alone would not justify us in making a finding on a factual matter not presented below.

because he had failed to show that he would have been admitted if no preference had been extended to minority applicants. The opinion contains dictum which is in conflict with some of our reasoning, but the court's holding is not at variance with our determination that the special admission program is invalid. 30/

30/ In the course of the opinion, the court declared that a preference to minorities in university admissions is permissible if the state has a substantial interest in the program and that such an interest would be found if, on balance, the gain to be derived from the preferential policy outweighs its possible detrimental effects. It rejected the "compelling interest" standard which we have applied on the ground that the Fourteenth Amendment was adopted to guarantee equality for blacks and "by logical extension has come to include all minority groups" and that it would be "ironic and . . . would cut against the very grain of the amendment" were that provision used "to strike down measures designed to achieve real equality for persons whom it was intended to aid." (384 N.Y.Supp.2d at p. 89.) The court acknowledged that a showing must be made that no nonracial alternative would serve the same purpose as a racially discriminatory policy and, although its language is not entirely clear, it implied that the burden was upon the university to show that the preferential program fulfilled a substantial state interest and that there were no less intrusive alternatives available.

The opinion in Alevy did not decide if the preferential program met a substantial state interest or whether an alternative less disadvantageous to the majority could have been devised, since it held that the petitioner would not have been admitted even in the absence of the program.

The dictum in Alevy appears to conflict with our analysis in this opinion only to the extent that it fails to apply the "compelling interest" measure. Since we have assumed, in this opinion, arguendo, that with minor exceptions the University has demonstrated that the special admission program serves a compelling state interest, even this conflict between the language of the New York court and this opinion is more apparent than real. Alevy suggests that the burden of showing that the state's interest cannot be met by less intrusive means remains with the discriminator--an approach consistent with that which we adopt here. In sum, the decision in Alevy does not provide a convincing refutation of our determination that the special admission program is invalid.

Few legal issues in recent years have troubled and divided legal commentators as much as that which we decide today. Observers of varied persuasion have demonstrated an ambivalence regarding the lawfulness and social desirability of preferential admission policies. These doubts, induced by disturbed sensibilities, are readily comprehensible.

On the one hand, it is urged that preferential treatment for minorities is essential in order to afford them an opportunity to enjoy the benefits which would have been theirs but for more than a century of exploitation and discrimination by the prevailing majority. Although legal impediments to equality have been removed by the judiciary and by the Congress, goes the argument, minorities still labor under severe handicaps. To achieve the American goal of true equality of opportunity among all races, more is required than merely removing the shackles of past formal restrictions; in the absence of special assistance, minorities will become a "self-perpetuating group at the bottom level of our society who have lost the ability and the hope of moving up." (Kaplan, Equality in an Unequal World (1966) 61 Nw.U.L.Rev. 363, 374.) Preferential admissions will be necessary only until minorities can compete on an equal basis, and will benefit not only the applicant who is specially

treated, but also the minority community in general.[31]

The persuasiveness of these arguments cannot be denied, for the ends sought by such programs are clearly just if the benefit to minorities is viewed in isolation. But there are more forceful policy reasons against preferential admissions based on race. The divisive effect of such preferences needs no explication and raises serious doubts whether the advantages obtained by the few preferred are worth the inevitable cost to racial harmony.[32]

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[31] The dissenting opinion justifies the special admission program on the ground that minorities have historically been the victims of discrimination and that preferences in their favor would provide diversity in the student body and integrate the University and the medical profession. This reasoning would sanction preferences on racial or ethnic grounds in all areas of society in which minorities are underrepresented if such preferences are "directly and reasonably related to the attainment of integration." (Post, p. ___.*) In an analogous situation, the Supreme Court has recently cautioned against the adoption of a rule which would have such far-flung consequences. In Washington v. Davis, supra, 44 U.S.L.Week 4789, the high court held that, in order to establish unconstitutional discrimination, it was not sufficient to show that more black than white police recruits failed a written test, but that the plaintiffs were required to demonstrate that the test had a racially discriminatory purpose. In the course of its opinion, the court stated, "A rule that a statute designed to serve neutral ends is nevertheless invalid, absent compelling justification, if in practice it benefits or burdens one race more than another would be far reaching and would raise serious questions about, and perhaps invalidate, a whole range of tax, welfare, public service, regulatory, and licensing statutes that may be more burdensome to the poor and to the average black than to the more affluent white." (44 U.S. L.Week at p. 4794.)

[32] Frederick Douglass, the emancipated slave, perceived the problem clearly 130 years ago. In the Liberator

*Multilith opinion, page 35.

The overemphasis upon race as a criterion will undoubtedly be counterproductive: rewards and penalties, achievements and failures, are likely to be considered in a racial context through the school years and beyond. Pragmatic problems are certain to arise in identifying groups which should be preferred or in specifying their numbers, and preferences once established will be difficult to alter or abolish; human nature suggests a preferred minority will be no more willing than others to relinquish an advantage once it is bestowed. Perhaps most important, the principle that the Constitution sanctions racial discrimination against a race--any race--is a dangerous concept fraught with potential for misuse in situations which involve far less laudable objectives than are manifest in the present case.

While a program can be damned by semantics, it is difficult to avoid considering the University scheme as a form of an education quota system, benevolent in concept perhaps, but a revival of quotas nevertheless. No college admission policy in history has been so thoroughly discredited in contemporary times as the use of racial percentages.

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for March 27, 1846, he wrote: "[T]hough I am more closely connected and identified with one class of outraged, oppressed and enslaved people, I cannot allow myself to be insensible to the wrongs and suffering of any part of the great family of man." (Graham, There Was Once a Slave (1947) p. 305.)

originated as a means of exclusion of racial and religious minorities from higher education, a quota becomes no less offensive when it serves to exclude a racial majority. "No form of discrimination should be opposed more vigorously than the quota system." (McWilliams, A Mask For Privilege (1948) p. 238.)[33/]

To uphold the University would call for the sacrifice of principle for the sake of dubious expediency and would represent a retreat in the struggle to assure that each man and woman shall be judged on the basis of individual merit alone, a struggle which has only lately achieved success in removing legal barriers to racial equality. The safest course, the one most consistent with the fundamental interests of all races and with the design of the Constitution is to hold, as we do, that the special admission program is unconstitutional because it violates the rights

E-23

33/ In another context the Supreme Court has frowned upon the doctrine of rigid proportionality. In upholding the right of a state to ban picketing the purpose of which was to compel a store to hire Negroes in proportion to Negro customers, the high court held, "To deny to California the right to ban picketing in the circumstances of this case would mean that there could be no prohibition of the pressure of picketing to secure proportional employment on ancestral grounds of Hungarians in Cleveland, of Poles in Buffalo, of Germans in Milwaukee, of Portuguese in New Bedford, of Mexicans in San Antonio, of the numerous minority groups in New York, and so on through the whole gamut of racial and religious concentrations in various cities." (Hughes v. Superior Court (1950) 339 U.S. 460, 464.)

guaranteed to the majority by the equal protection clause of the Fourteenth Amendment of the United States Constitution.

Bakke's Appeal

As set forth above, the trial court found that Bakke would not have been admitted to either the 1973 or 1974 entering class at the University even if there had been no special admission program. However, in reaching this conclusion the court ruled that the burden of proof remained with Bakke throughout the trial. He asserts that since he established that the University had discriminated against him cause of his race, the burden of proof shifted to the University to demonstrate that he would not have been admitted even without the special admission program.

We agree. Under the general rule, the burden of proof would remain with plaintiff Bakke throughout the trial on the issue of his admission. (Evid. Code, § 500.) However, a substantial number of federal cases involving employment discrimination under title VII have held that if the plaintiff establishes that the employer has been guilty of discrimination in hiring or promotion, and he brings himself within the class of employees who suffered discrimination, the burden of showing that he was unqualified for the job or the promotion rests with the employer. (See, e.g., Franks v. Bowman Transportation, Inc., supra, 44 U.S.L.Week

4356, 4363; Mims v. Wilson (5th Cir. 1975) 514 F.2d 106, 110; Meadows v. Ford Motor Company (6th Cir. 1975) 510 F.2d 939, 948; Baxter v. Savannah Sugar Refining Corporation (5th Cir. 1974) 495 F.2d 437, 444-445.) As the United States Supreme Court stated in the Franks case, "No reason appears . . . why the victim rather than the perpetrator of the illegal act should bear the burden of proof . . . ." (44 U.S.L.Week at p. 4363, fn. 32.)

By analogy to these decisions, we hold that the trial court should have ruled that since Bakke successfully demonstrated that the University had unconstitutionally discriminated against him, the burden of proof shifted to the University to establish that he would not have been admitted to the 1973 or 1974 entering class without the invalid preferences. In these circumstances, we remand the case to the trial court for the purpose of determining, under the proper allocation of the burden of proof, whether Bakke would have been admitted to the 1973 or 1974 entering class absent the special admission program. (See Haft v. Lone Palm Hotel (1970) 3 Cal.3d 756, 775.)[34/]

E-24

[34/] Because of the manifest prejudice to educational institutions if we were to require that our holding herein be applied so as to set aside admission decisions made in the past, the rule we announce shall, with the exceptions hereafter specified, govern only those admission decisions made after the date this opinion becomes final in this court. However, our holding shall apply to Bakke and any other applicant who have filed actions for judicial relief on similar grounds prior to the filing date of this opinion.

The judgment is affirmed insofar as it determines that the special admission program is invalid; the judgment is reversed insofar as it denies Bakke an injunction ordering that he be admitted to the University, and the trial court is directed to determine whether he would have been accepted for the 1973 or 1974 entering class in accordance with the views expressed herein. Bakke shall recover his costs on these appeals.

MOSK, J.

WE CONCUR:

WRIGHT, C.J.
McCOMB, J.
SULLIVAN, J.
CLARK, J.
RICHARDSON, J.

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Supreme Court Copy

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

ALLAN BAKKE, Plaintiff, Cross-defendant and Appellant, v. THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, Defendant, Cross-complainant and Appellant.	S.F. 23311 Super. Ct. No. 31287

MODIFICATION OF OPINION

BY THE COURT: The opinion filed herein on September 16, 1976, appearing at 18 Cal.3d 34, is modified by the following changes on page 64: (1) by adding the words "would ordinarily" following the word "we" and preceding the word "remand" on line 2, (2) by adding at the end of line 6 the following: "However, on appeal the University has conceded that it cannot meet the burden of proving that the special admission program did not result in Bakke's exclusion. Therefore, he is entitled to an order that he be admitted to the University." (3) by deleting lines 10 through 13 and substituting therefor the following: "University, and the

E-25

192

trial court is directed to enter judgment ordering Bakke to be admitted. Bakke shall recover his costs on these appeals."

Item #2

Brief of Amici Curiae,

in the Supreme Court of the United States

October Term 1976;

The Regents of the University of California v. Allan Bakke

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-811

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA,
Petitioner,
v.
ALLAN BAKKE, *Respondent.*

On Petition for a Writ of Certiorari to the Supreme Court of the State of California

BRIEF OF AMICI CURIAE

FOR The National Urban League; the National Organization for Women (NOW); the United Automobile, Aerospace, and Agricultural Implement Workers of America (UAW); the National Conference of Black Lawyers; the La Raza National Lawyers Association; the Mexican American Legal Defense and Educational Fund; the Puerto Rican Legal Defense and Educational Fund; California Rural Legal Assistance, Inc.; the National Bar Association, UCLA Black Alumni Association, the National Federation of Women's Organizations; UC Davis Law School, Chicano Alumni Association; the Charles Houston Bar Association; the National Lawyers Guild; La Raza National Law Students Association; Black American Law Student Association

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TABLE OF CONTENTS

	Page
INTEREST OF AMICI CURIAE	2
I. Introduction	6
II. As a result of Bakke's lack of standing to sue, no case or controversy exists herein as required by Article III	7
A. The Requirements of Article III	7
B. The Facts of This Case Do Not Comport With the Article III Requirement	9
1. The Application Process	9
2. The Bakke Applications	11
C. The "Stipulation" by the University Is an Effort to Fabricate Jurisdiction in This Court	13
III. Because the issue on the merits is so important to the entire nation, this case should not be disposed of on the merits on the basis of such a sketchy record	19
A. A Fully Developed Record Is Essential To a Reasoned and Principled Judgment in This Case	19
B. The Record	23
1. The Evidence Presented by the University	23
2. The Evidence Not Presented by the University	23
CONCLUSION	27
APPENDIX A	1a
APPENDIX B	9a

TABLE OF AUTHORITIES

Cases: Page

Arlington Heights v. Metropolitan Housing Corp., — U.S. — (January 11, 1977) (Slip. Opp. at B538-542) 8

Associated General Contractors of Mass., Inc. v. Altshuler, 490 F.2d 9, *cert. den.*, 416 U.S. 957 (1st Cir. 1973) 20, 24

Bakke v. Board of Regents of the University of California, 18 Cal. 3d 34 (1976) 22, 26

Brown v. Board of Education, 347 U.S. 483 (1954) ... 6

Contractors Assn. of Eastern Penn. v. Secretary of Labor, 442 F.2d 159 (3rd Cir., 1971), *cert. den.*, 404 U.S. 845 (1971) 24

DeFunis v. Odegaard, 416 U.S. 312 (1974) 19, 24, 25

Flast v. Cohen, 392 U.S. 83, 99 (1968) 7

Hatch v. Reardon, 204 U.S. 152, 160 (1907) 7

Jackson v. Pasadena City School District, 59 Cal. 2d 876 (1963) 26

Kahn v. Shevin, 416 U.S. 351 (1974) 24

Lau v. Nichols, 414 U.S. 563 (1974) 25, 26

Lehon v. City of Atlanta, 242 U.S. 53 (1916) 7

Lord v. Veazie, 49 U.S. (8 How.), 251, 255 (1850) 18

Massachusetts v. Painten, 389 U.S. 560, 561 (1968) .. 21

Morales v. State of New York, 396 U.S. 102, 104-06 (1969) 19

Muskrat v. United States, 219 U.S. 346 (1911) 18

Naim v. Naim, 350 U.S. 891 (1956) 21

Newsom v. Smyth. 365 U.S. 604, 604-05 (1961) 21

Poe v. Ullman, 367 U.S. 497 (1961) 22

Rescue Army v. Municipal Court, 331 U.S. 549 (1947) 21

Richardson v. Ramirez, 418 U.S. 24, 36 (1974) 16

Schlesinger v. Reservists to Stop the War, 418 U.S. 208 (1974) 18

Sierra Club v. Morton, 405 U.S. 727, 734-735 (1972) .. 8

Simon v. Eastern Kentucky Welfare Rights Organization, — U.S. —, 96 S.Ct. 1917 ..... 8, 13, 24

Smith v. Mississippi, 373 U.S. 238 (1963) 21

Swift & Co. v. Hocking Valley Ry. Co., 243 U.S. 282, 289 (1917) 14

United States v. Richardson, 418 U.S. 166 (1974) 8, 18

Page

Wainwright v. City of New Orleans, 392 U.S. 598 (1967) 21
Warth v. Seldin, 422 U.S. 490 (1975) 8, 13, 18
Washington v. Davis, — U.S. —, 96 S.Ct. 2040 (1976) 25

REGULATION:

Executive Order No. 11246, 30 Fed. Reg. 12319 (Sept. 24, 1965) 20

MISCELLANEOUS:

Bickel, Alexander, THE LEAST DANGEROUS BRANCH; The Supreme Court at the Bar of Politics, Bobbs-Merrill, 1962, 169-82 20
California Assembly, Spec. Subcomm. on Bilingual-Bicultural Education, "Toward Meaningful and Equal Educational Opportunity: Report of Hearings on Bilingual-Bicultural Education (July, 1976) 26
Educational Testing Service, Law School Validity Study Service, 21 (1973) 26
Feitz, "The MCAT and Success in Medical School", Sess. #9.03, Div. of Educ. Mens. and Research, AAMC (mimeo) 25
Frankfurter, A Note on Advisory Opinions, 37 HARV. L. REV. 1002, 1006, n. 12 (1924) 7
Griswold, Some Observations on the DeFunis Case, 75 COLUM. L. REV. 512, 514-515 (1975) 26
Pollack, "DeFunis Est Non Disputandum", 75 COLUM. L. REV. 495, 509 (1975) 20
Simon, Performance of Medical Students Admitted Via Regular and Admissions-Variance Routes, 50 J. MED. ED. 237 (March, 1975) 25

INTEREST OF AMICI CURIAE[1]

The National Urban League, Inc., is a charitable and educational organization organized as a not-for-profit corporation under the laws of the State of New York. For more than 65 years, the League and its predecessors have addressed themselves to the problems of disadvantaged minorities in the United States by improving the working conditions of blacks and other minorities, by fostering better race relations and increased understanding among all persons, and by implementing programs approved by the League's interracial board of trustees.

The NOW Legal Defense and Educational Fund is the litigation and education affiliate of the National Organization for Women. NOW is a national membership organization of women and men organized to bring women into full and equal participation in every aspect of American society. The organization has a membership of approximately 30,000 with over five hundred chapters throughout the United States. Many of its members are university women, faculty and students.

The UAW is the largest industrial union in the world, representing approximately a million and a half workers and their families. Including wives and children, UAW represents more than 4½ million persons throughout the United States and Canada. The UAW, which is deeply committed to equal opportunity

[1] Letters of consent from counsel for the petitioners and the respondents have been filed with the Clerk of the Court.

E-30

and anti-discrimination, does much more than bargain for its members. It is by mandate of its Constitution and tradition deeply involved in the larger issues of the quality of life and the improvement of democratic institutions. The question presented by this case vitally affects the UAW and its members.

The National Conference of Black Lawyers, through its national office, local chapters, cooperating attorneys and the law student organization, has (1) carried on a program of litigation, including defense of affirmative suits on community issues; (2) monitored governmental activity that affects the black community, including judicial appointments, and the work of the legislative, executive, judicial and administrative branches of government; and (3) served the black bar through lawyer referral, job placement, continuing legal education programs, defense of advocates facing judicial and bar sanctions, and watchdog activity on law school admissions and curriculum.

La Raza National Lawyers Association is a nationwide group of attorneys of Mexican-American heritage. The Association is committed to working for the movement toward equality of Mexican Americans in American society. To achieve this end, the Association is committed to increase the admission of Mexican-Americans to law schools and the legal profession in order that the legal needs of Mexican-Americans can be represented to the fullest in the courts of our nation.

The National Lawyers Guild is an organization founded in 1937 with over 5,000 members. It works to maintain and protect civil rights and civil liberties.

U.C. Davis Law School, Chicano Alumni Association is a group of Chicano graduates of the Martin Luther King, Jr. School of Law at U.C. Davis. The Association's goals are twofold: (1) To operate as a forum for communication for Chicano law graduates in order that they can work for the social betterment of the Chicano people; and, (2) to maintain communication with Chicano law students at the Davis Law School in order to assist the students in the areas of admission, retention and graduation.

The U.C.L.A. Black Alumni Association is composed of graduates of the U.C.L.A. special admissions program who are interested in the continuing vitality of the special admissions programs as one vehicle of assuring representation of minorities in the University's graduate schools. In conjunction with the University, this Association has a continuing interest in maintaining such programs.

The Mexican American Legal Defense and Educational Fund is a privately funded civil rights law firm dedicated to insuring that the civil rights of Mexican Americans are properly protected; a major thrust of their effort has been in the area of education, including higher education, for which they have established a Task Force of prominent Mexican Americans to advise them. They filed an amicus brief in the instant case when it was pending in the California Supreme Court.

The Puerto Rican Legal Defense and Educational Fund is a privately funded civil rights law firm dedicated to insuring that the civil rights of persons of Puerto Rican ancestry are fully protected. They have been greatly involved in education litigation on behalf of Puerto Rican students.

National Bar Association, Inc., was formally organized in 1925. It consists of jurists, lawyers, legal scholars and students whose purpose and programs have sought to combat the effects of racial discrimination and to advance the realization of the goal of first class citizenship for all Americans. The membership of the Association has successfully advanced the interests of minority citizens in the areas of housing, employment, education, voting, and protection of the rights of criminal defendants.

La Raza National Law Students Association is a nationwide group of Chicano and Latino law students organized for the following purposes: 1) to recruit Chicanos and Latinos to attend law schools; 2) to assist in the retention of Chicano and Latino law students once they are admitted to law school; and 3) to promote the provision of legal services to Chicano and Latino communities throughout the nation.

Charles Houston Bar Association is an association principally comprised of Black attorneys in Northern California. It is an affiliate of the National Bar Association, a nationwide association of Black attorneys and students. Charles Houston Bar Association has been actively involved in promoting and protecting the civil rights of all minorities. It includes among its members, judges, attorneys and law professors, and has a close relationship with minority student associations.

California Rural Legal Assistance, Inc., is an organization funded under the Legal Services Corporation Act to provide legal assistance to low-income individuals. A high proportion of its clients are members of racial minority groups, and a good deal of its

efforts have been directed toward combatting the effects of racial discrimination against these clients in many segments of American society.

BALSA was founded in 1968 in NY and has 7,000 Black law students among its membership. Its purpose is to articulate and promote goals of Black American law students, encourage professional competence and instill in the Black attorney and law student a greater awareness of and commitment to the needs of the Black community.

I.

INTRODUCTION

E-32

Whether the Constitution will permit the use of affirmative efforts by institutions of higher education to overcome historical discrimination and segregation of racial minorities is an issue of vital importance, both to amici, and to the American society at large. The Court's resolution of the issue presented in this case may determine the future course of integration efforts not only in the medical profession, but in other professions and the educational avenues leading to them. Such a decision will have a dramatic and long-term impact on civil rights and race relations for future decades in this country. The resolution of this issue may in many ways approach in importance the landmark decision, *Brown* v. *Board of Education*, 347 U.S. 483 (1954).

Although desirous that this important issue be finally resolved, amici strongly urge that a decision not be rendered in the case at bar. It is essential that this issue may be resolved in a case where a spirited conflict between the parties has resulted in a fully developed

record upon which to base such an important decision. The crux of amici's position is that instead petitioners have attempted to "stipulate" to this Court's jurisdiction in order that they can seek an advisory opinion on this critical issue in a case with a sparse record and without the presence of a case or controversy as mandated by Article III of the United States Constitution. An issue of this magnitude simply cannot be resolved in a case which severely lacks "that concrete adverseness which sharpens the presentation of issues upon which the Court so largely depends for illumination of difficult constitutional questions". *Flast* v. *Cohen*, 392 U.S. 83, 99 (1968).

II.

AS A RESULT OF BAKKE'S LACK OF STANDING TO SUE, NO CASE OR CONTROVERSY EXISTS HEREIN AS REQUIRED BY ARTICLE III

A. The Requirements of Article III.

In a formulation of the rule directly applicable to the facts of this case, this Court in *Flast* v. *Cohen*, *supra*, at 99 stated the requirement of standing as a constitutional prerequisite to federal jurisdiction:

> The fundamental aspect of standing focuses on the party seeking to get his complaint before a federal court and not on the issues he wishes to have adjudicated.[3]

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[3] As Mr. Justice Frankfurter stated:

One must oneself be made a victim of a law (*Lehon* v. *City of Atlanta*, 242 U.S. 53 (1916)) or belong to the class 'for whose sake the constitutional protection is given' (*Hatch* v. *Reardon*, 204 U.S. 152, 160 (1907)) to be able to invoke the Constitution before the Court. Frankfurter, *A Note on Advisory Opinions*, 37 Harv. L. Rev. 1002, 1006, N. 12 (1924).

Last term this Court reiterated this rule as follows:

> . . . The standing question in its Art. III aspect "is whether the plaintiff has 'alleged such personal stake in the outcome of the controversy' as to warrant *his* invocation of federal court jurisdiction and to justify exercise of the court's remedial powers on his behalf." *Warth* v. *Seldin*, 422 U.S. 490, 498-499 (1975) (emphasis in original). In sum, when a plaintiff's standing is brought into issue the relevant inquiry is whether, assuming justiciability of the claim, the plaintiff has shown an injury to himself that is likely to be redressed by a favorable decision. Absent such a showing, exercise of its power by a federal court would be gratuitous and thus inconsistent with the Art. III limitation. *Simon* v. *Eastern Kentucky W.R.O.*, —— U.S. ——, ——, 96 S.Ct. 1917, ——, (1976). *Accord Sierra Club* v. *Morton*, 405 U.S. 727, 734-35 (1972); *United States* v. *Richardson*, 418 U.S. 166, 174 (1974).*

This causation requirement is not met by the facts of this case. This Court's jurisdiction can only be exercised if it is shown, first, that Bakke suffered a "specific harm" to himself as "the consequence" of the Task Force program at U.S. Medical School, *Warth* v. *Seldin, supra*, at 505 (1975). No such showing has or could be made. To the contrary, as strongly supported by the evidence in the record and as specifically stated in the trial court's findings, "plaintiff would not have been accepted for admission to the class entering the Davis Medical School . . . [in 1973 and 1974] even

* Just this week, the Court once again reaffirmed the *Warth-Simon* principle that an "actionable causal relationship" must be demonstrated between the challenged conduct and the asserted injury. *Arlington Heights* v. *Metropolitan Housing Corp.*, —— U.S. ——, (January 11, 1977) (Slip. Opp. at B538-B542).

if there had been no special admissions program." (Pet. for Cert., App. F. p. 116a.)

B. The Facts of This Case Do Not Comport with the Article III Requirement.

Mr. Bakke applied to the Davis Medical School in 1973 and 1974. In each of these years, he was not selected for any of the 84 regular admission positions available.[4] It is his contention that he would have been admitted had the 16 Task Force positions been opened and available to regular applicants. In short, this proposition is premised on the belief that his application was among the top 16 regular applicants not admitted. The evidence in the record reveals Bakke's premise to be totally without foundation.

1. *The application process.*

In order to understand why it is relatively easy to make such an assertion, it is necessary to realize that all applicants were given a "Benchmark score" which was the primary tool for comparing candidates. This Benchmark score was a composite of many factors including scores on the MCAT examination, grade point average, and evaluations flowing from various interviews. Testimony indicates that with only minor exceptions, not relevant to Bakke, an applicant with a higher Benchmark score was admitted over one in the same batch with a lower score (CT.[5] 63-64). This was true, only with respect to those applications which

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[4] In 1973, there were in fact 85 regular admission positions and 15 Task Force positions. This recently discovered fact was not reflected in the trial court record. See n. —, *infra*.

[5] "CT" References are to the Clerk's Transcript filed in the California Supreme Court.

were considered within the same period of time because it was the practice to evaluate the applications in "batches" (CT. 63-64). In the first month in which acceptances were made, applications then on file would be evaluated in order to send out early offers.

After a sampling of acceptances were received, which would indicate an acceptance rate adequate to fill the number of spaces still available, all of the previously received applications which were competitive but had not prompted offers would be compared with recently received applications and a second round of offers would go forth to fill the remaining slots. The applications thus on file in January would be evaluated against each other. The applicants with the highest Benchmark scores receive offers. The applications on file during successive rounds would likewise be evaluated and offers would go to those with the highest Benchmark scores. Thus, the two determinative factors in the decision-making process were the Benchmark score that the applicant was given and the time when the application was considered. At the conclusion of this process, the remaining students, who were numerically close to admission, were placed on an alternate list. Inclusion on the alternates list was not based on strict numerical rankings. The Dean of Admission had discretion to admit persons who would bring special skills. It should be noted that the Dean in neither year exercised his discretion to place Bakke on the alternate list (CT. 64). This then is the basic framework from which the Dean of Admission in uncontroverted testimony and the trial court, on the basis of such testimony, was able to determine that Mr. Bakke would not have been admitted even in the absence of the Task Force program.

2. *The Bakke applications.*

Bakke's 1973 application, his first, was not received until "quite late", and was thus prejudiced by the fact that a substantial number of the positions had already been filled (CT. 64). Earlier applicants, regular as well as Task Force, had been accepted for admission prior to consideration of Bakke's application (CT. 54, 181). Thus, his application was competing for an otherwise more limited number of remaining positions against a larger number of competitors. Mr. Bakke's 1973 Benchmark score was 468. As the Dean of Admission stated, "[i]n filling the 100 spaces in the class no applicants with ratings below 470 were admitted after Mr. Bakke's evaluation was completed". (CT. 69).

Assuming that none of the Task Force admittees had been able to meet the regular admission standards and that all 16 positions were available, the Dean of Admissions has unequivocally stated that Bakke would nevertheless have been denied admission:

> "Indeed, Plaintiff would not even have been among the 16 who would have been selected assuming that *all* of the places reserved under the special admissions program had been open following Plaintiffs' evaluation. Almost every applicant offered a place in the class after the middle of May attends the medical school. There were 15 applicants at 469 ahead of Mr. Bakke and he would not have been among the top applicants at 468 because he was not a 468 put on the alternates list as he had no special qualifications or new information upgrading his score."
>
> (CT. 70).

Indeed there were twenty students in 1973 who like Bakke had 468, some of whom were placed on the al-

ternates list due to special qualifications (CT. 70). It thus is certain that at least 16 persons had priority over Mr. Bakke in 1973 and, thus, as the trial court found, the demise of the Task Force program would not have resulted in his admission.

The evidence is even stronger regarding Bakke's 1974 application. His 1974 Benchmark score was 549 out of 600. The record shows that there were a total of 20 applicants on the alternates list who would have been selected for any additional positions. Once again, Bakke was not on the alternates list in 1974. Furthermore, there were an additional 12 applicants, not on the alternates list, with numerical ratings above Bakke's 549 (CT. 71). Thus, there were at least 32 applicants who were ahead of Bakke for the 16 possible positions. As the Dean of Admission stated, in 1974 Bakke did not even "come close to admission" (CT. 71).*

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*An additional factor which would have operated against Bakke's application is the definite possibility that some of the Task Force admittees would have been able to gain admission under the regular admissions process. While there are no numerical ratings of Task Force admittees available, the record does disclose that the overall grade point average of such admittees ranged up to 3.76 in 1973) (CT. 175, 210). In 1974, Task Force admittees had overall grade point averages ranging up to 3.45 and science grade point averages ranging up to 3.89 (CT. 178, 223). Bakke's scores were 3.51 and 3.45 respectively. (CT. 115). Thus, in both 1973 and 1974, there were Task Force applicants whose grades equalled and surpassed that of Bakke and who could have met certain of the non-racial special consideration factors making their applications more attractive. Finally, it should be noted that in 1973, Bakke was denied admission at 10 other Medical Schools to which he applied (Bowman-Gray, University of South Dakota, University of Cincinnati, Wayne State University, Georgetown University, Mayo, U.C.L.A., San Francisco, Stanford and his undergraduate alma mater, University of Minnesota) (CT. 48-49).

In conclusion, the uncontroverted evidence strongly supports the finding of the trial court that the Task Force program had no effect on Bakke's application in that he would have been denied admission regardless of the program's existence.

As in *Warth*, where the facts failed to show that the restrictive zoning practices resulted in plaintiffs' exclusion, here the record is equally devoid of *any* facts showing that the Task Force program resulted in Bakke's exclusion from the Davis Medical School. No showing is possible that "but for" the Task Force program, Bakke would have been admitted. In short, no "casual relationship" exists on these facts. *Warth, supra*, 422 U.S. at 407.

Bakke is simply not within the class of persons affected by the policy he seeks to challenge. The parties seek a "gratuitous" decision of complex and vitally important issues in this case "inconsistent with the Article III limitation". *Simon, supra*, —— U.S. ——, 96 S.Ct. 1917.

C. The "Stipulation" By the University is an Effort to Fabricate Jurisdiction in This Court.

Under the standards of Article III, as has been previously shown, Bakke does not have sufficient standing to prosecute this litigation in the federal courts. The University, in its rush to obtain a judgment from this Court, recognized this fatal flaw after the California Supreme Court filed its opinion. At the time of its Petition for Rehearing in the California Supreme Court, the University sought to correct it. What it did, in essence, was to "stipulate" to this Court's jurisdiction in order to obtain the advisory opinion they seek. Such a "stipulation" was a pure fabrication of the

facts, contrary to the University's insistent position up to that date, and contrary to the trial court's findings;[1] further it is ineffectual under this Court's consistent rulings that parties cannot stipulate to jurisdiction *Swift & Co.* v. *Hocking Valley Ry. Co.*, 243 U.S. 282, 289 (1917).

The California Supreme Court in its September 16th Order remanded to the trial court the issue of whether Bakke would have been admitted to the Davis Medical School in the absence of the Task Force pro-

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[1] The Petitioners make reference to an aside by the trial court in its initial Notice of Intended Decision that there was "at least a possibility that [Bakke] might have been admitted" absent the Task Force program. (Pet. for Cert. at 11, n. 4) The Court then went on to find specifically to the contrary. (*Id.*, at 116a). Subsequently, after further briefing and argument, the trial court spoke with even greater finality in its Addendum to Notice of Intended Decision:

> The Court has again reviewed the evidence on this issue and finds that even if 16 positions had not been reserved for minority students in each of the two years in question, plaintiff still would not have been admitted in either year. Had the evidence shown that plaintiff would have been admitted if the 16 positions had not been reserved, the court would have ordered him admitted. (*Id.*, at 111a).

And the court after discussing the record in detail concluded subsequently in its Findings of Fact and Conclusions of Law that:

> Plaintiff would not have been accepted for admission to the 1973 class even if there had been no special admissions program; • • • Plaintiff would not have been accepted for admission to the class entering Davis Medical School in 1974 even if there had been no special admission program (*Id.*, at 116a-117a).

Dr. Lowery's Memo to H.E.W., referred to at n.4 of the Petition for Certiorari, merely bemoans the fact that a "lack of available space" exists in the Medical School and had "additional places" existed, Bakke may have been admitted. This in no way contradicts the trial court's findings that given the existing space limitations, Mr. Bakke would not have been admitted even if the 16 slots had become available.

gram, shifting the burden to the University to establish that Bakke would not have been so admitted. The court did not intimate in any way, however, that the uncontroverted and substantial evidence presented by the University at the trial level was insufficient; it merely stated that this evidence must be evaluated in light of the different burden (18 Cal. 3d at 64).[8]

The University subsequently attached a "stipulation" to its Petition for Rehearing, which purported to concede that the University could not meet this burden.[8] The Petition, relying upon this "stipulation" urged the court to remand to the trial court to order Bakke admitted to the Medical School. The California Supreme Court on the basis of the stipulation so ordered.

The logical question flowing from the stipulations is why the University contrary to its insistence that Mr. Bakke would not have been admitted even in the absence of the task force program essentially reversed its position at such a late date. (See pp. —, *supra*.)

The answer to this question is that the University realized that the record, in the absence of the stipulation, clearly showed a lack of jurisdiction in this Court to decide an issue that it clearly wished addressed; as the University said in urging the Court to order Bakke admitted:

> It is far more important for the University to obtain the most authoritative decision possible on

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[8] An analogue to the present case would be a woman not pregnant seeking to invalidate an abortion law in federal court and, although conclusive evidence showed her not to be pregnant, the state (being desirous of an advisory opinion) "stipulating" that it was unable to prove that fact in order to simulate a case or controversy.

> the legality of its admissions process than to argue over whether Mr. Bakke would or would not have been admitted in the absence of the special admissions program. A remand to the trial court for determination of that factual issue might delay and *perhaps prevent review* of the constitutional issue by the United States Supreme Court. Petition for Rehearing, 11-12 (emphasis added).*

Admission of Mr. Bakke to the Medical School certainly would not have "prevented review" by this Court. By asking for this relief in the stipulation, it is clear that it was not admission that the University feared. Rather, it was ultimate success on remand to the trial court with regard to Bakke's admissibility which the University wished to avoid. It was precisely their success which would have made apparent Bakke's lack of Article III standing and thereby "prevent" the review that the University so eagerly seeks. In other words, the University essentially gave up an air tight case in order to confer "jurisdiction" on this Court so that it could achieve its goal of obtaining "the most authoritative decision possible". (*Ibid.*)"

E-37

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* No problem arose until the University sought an opinion from this Court, for in California the same standing strictures are not applicable. However, as Justice Rehnquist, writing for the majority in *Richardson* v. *Ramirez*, 418 U.S. 24, 36 (1974), observed: "While the Supreme Court of California may choose to adjudicate a controversy simply because of its public importance, and the desirability of a statewide decision, we are limited by the case-or-controversy requirements of Article III to adjudication of actual disputes between adverse parties".

** Indeed there are indications predating the filing of this action that the University's primary aim was to "set the stage" for a judicial determination of the validity of its Task Force program. In the summer of 1973, following his first denial, Mr. Bakke entered into an exchange of correspondence with the Admissions

However resourceful this attempt, a common thread in this Court's past and recent decisions has been the view that the Court is not empowered to

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Office of the Davis Medical School. In the first of three letters, between Bakke and Assistant to the Dean of Admissions, Peter C. Storandt, Storandt expressed sympathy for Bakke's position. Further, he urged that Bakke "review carefully" the Washington Supreme Court's opinion in *DeFunis*, sent him a summary of the opinion, urged that he contact two professors known to be knowledgeable in medical jurisprudence (CT. 264-65), recommended that he contact an attorney and concluded with the "hope that . . . you will consider your next actions soon" (CT. 265).

Two weeks later, Bakke met with Storandt at the Davis Medical School (CT. 268); and 5 days later Bakke wrote to Storandt as follows:

> Thank you for taking time to meet with me last Friday afternoon. Our discussion was very helpful to me in considering possible courses of action. I appreciate your professional interest in the question of the moral and legal propriety of quotas and preferential admissions policies; even more impressive to me was your real concern about the effect of admission policies on each individual applicant.
>
> You already know, from our meeting and previous correspondence, that my first concern is to be allowed to study medicine, and that challenging the concept of racial quotas is secondary. Although medical school admission is important to me personally, clarification and resolution of the quota issue is unquestionably a more significant goal because of its direct impact on all applicants. (CT. 268; App. A)

Bakke's letter then went on to outline his alternative litigation strategies (CT. 268-69) consisting of "Plan A" and "Plan B". Storandt promptly replied. After remarking that, "the eventual result of your next actions will be of significance to many present and future medical school applicants" (CT. 266), he went on to suggest the use of "Plan B" over "Plan A":

> I am unclear about the basis for a suit under your Plan A. Without the thrust of a current application for admission at Stanford, I wonder on what basis you could develop a case as plaintiff; if successful, what would the practical result of your suit amount to? With this reservation in mind, in addition to my sympathy with the financial exigencies you cite, I prefer your Plan B, with the proviso that you press the suit—even if admitted—at the institution of your choice. And

decide important social issues merely because a party wishes a decision. *Lord* v. *Veazie*, 49 U.S. (8 How.), 251, 255 (1850); *Muskrat* v. *United States*, 219 U.S. 346 (1911), *United States* v. *Richardson*, 418 U.S. 166 (1974) (misuse of funds by the Central Intelligence Agency); *Schlesinger* v. *Reservists to Stop the War*, 418 U.S. 208 (1974) (violation of incompatability clause of Article I, § 6 cl. 2 of the Constitution); *Warth* v. *Seldin*, 422 U.S. 490 (1974) (constitutionality of restrictive zoning ordinances); while the last three cases cited highlighted burning issues that great numbers of persons had and have an interest in, that fact alone, without more, was deemed insufficient to invoke this Court's jurisdiction.

E-38

This is not the first time that a party has attempted by stipulation to circumvent this Court's evaluation of the true facts. However, as Justice Frankfurter explained:

> Even where the parties to the litigation have stipulated as to the 'facts' this Court will disregard the stipulation—if the stipulation obviously forecloses real questions of law. *United States* v. *Felin & Co.*, 334 U.S. 624, 640 (1948).

The rationale for looking behind a stipulation of fact that fails to correspond to real facts was further explicated by Justice Frankfurter:

> if this Court had to treat as the starting point for the determination of constitutional issues a spurious finding of 'fact' contradicted by an adjudicated finding between the very parties to the

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there Stanford appears to have a challengeable pronouncement. If you are simultaneously admitted at Davis under EDR [Early Decision Program], you would have the security of starting here in twelve more months (CT. 266).

216

instant controversy, constitutional adjudication would become a verbal game. *Id.*, at 639.

In sum, it is just a "verbal game" which the University is playing with this stipulation. The facts and the University's own assertions up to the date of the stipulation belie its validity. The University's effort to confer jurisdiction on this court should properly be rejected.

III.

BECAUSE THE ISSUE ON THE MERITS IS SO IMPORTANT TO THE ENTIRE NATION, THIS CASE SHOULD NOT BE DISPOSED OF ON THE MERITS ON THE BASIS OF SUCH A SKETCHY RECORD

A. A Fully Developed Record Is Essential to a Reasoned and Principled Judgment in This Case.

The record in this case is so deficient that this Court should decline to reach the merits. A decision on the merits should not be made on such an important issue on such a poor record. Rather, the Court should vacate the decision below and remand for the taking of further evidence. *DeFunis* v. *Odegaard*, 416 U.S. 312, 320 (1974); *Morales* v. *State of New York*, 396 U.S. 102, 104-06 (1969) (Order vacating and remanding for taking of further evidence because of the "absence of a record that squarely and necessarily presents the issue and fully illuminates the factual context in which the question arises. . . ." *id.*, at 106.

Concededly, the substantive issue raised by the parties is vitally important. The numerosity of amici and their participation at such an early stage in this Court attest to that. A decision on the merits could also have substantial bearing on employment practices.

See, e.g., Executive Order 11246, 30 Fed. Reg. 12319 (Sept. 24, 1965), as amended; *Associated Gen'l Contractors of Mass., Inc.* v. *Altshuler*, 490 F.2d 9, cert. den., 416 U.S. 957 (1st Cir. 1973).

Petitioners are not engaging in hyperbole when they characterize the issue as "perhaps the most important equal protection issue of the decade". (Pet. for Cert., 12.) It is even more than that because of what it may portent for the decades ahead, for both minorities and the majority of our nation.

We do not propose that this case is not worthy of certiorari because it lacks significance, but rather, precisely because the issue is so very significant both the needs and interests of all affected persons as well as sound jurisprudential principles militate that the Court closely examine the record to best insure that this is *the* case to decide *this* issue. As Dean Pollack has said, "[t]he more important the issues, the more strictly the Court must monitor the exercise of its awesome discretion". *DeFunis Est Non Disputandum*, 75 COLUM. L. REV. 495, 509 (1975).

This Court's power rests, not on the militia that it can command, for it commands none. Rather, it rests upon the soundness of its reasoning and the shared belief of those who do and those who do not prevail that reasoning is well-grounded in a fully developed case. In the words of the late Professor Alexander Bickel, the "well-tempered case", is the one which best insures public and professional acceptance of this Court's awesome role of final constitutional arbiter. *The Least Dangerous Branch; The Supreme Court at the Bar of Politics*, Bobbs-Merrill, 1962 169-82; *see also*, id., at 124, 197-98. The substantive issue in the

instant case is the paradigm of the prudent wisdom embodied in the need for the "well-tempered case".

Frequently, this Court has declined to grant certiorari because a record was not "sufficiently clear and specific to permit decision of the important constitutional questions involved. . ." *Massachusetts* v. *Painten*, 389 U.S. 560, 561 (1968). The Court declines its Writ where a record is "too opaque", *Wainwright* v. *City of New Orleans*, 392 U.S. 598 (1967) (concurring opinion of Harlan, J.) or because "the facts necessary for evaluation of the dispositive constitutional issues in [the] case are not adequately presented by the record", *id.*, at 599 (concurring opinion of Fortas and Marshall, J.J.). *Accord*, *Naim* v. *Naim*, 350 U.S. 891 (1956); *Newsom* v. *Smyth*, 365 U.S. 604, 604-05 (1961); *Smith* v. *Mississippi*, 373 U.S. 238 (1963).

The Court has broadly explained that the basis for its rules of caution:

> lie in all that goes to make up the unique place and character, in our scheme, of judicial review of governmental action for constitutionality. They are found in the delicacy of that function, *particularly in view of possible consequences for* others also stemming from constitutional roots [and] the comparative finality of those consequences . . . *Rescue Army* v. *Municipal Court*, 331 U.S. 549, 571 (1947) (emphasis added).

In the instant case, the "others" are the disadvantaged minorities who risk jeopardy of their rights on an inadequate record, minorities who have not participated in the litigation. The University, at best, bears only a limited risk because the intense competition for places in the Medical School will insure that qualified

minority applicants will be replaced by other qualified applicants.

We are not unmindful of the "very real disadvantages, for the assurance of rights, which deferring decision very often entails." *Id.*, at 571. Lest there be any doubt, we do not urge the Court to avoid the merits in this case for the purpose of delay or deferral. Many other similar cases are now on their way to this Court. Rather, because of the extreme importance of the substantive issues, we urge that the Court choose the "fully developed case" for disposition because:

> a contrary policy, of accelerated decision, might do equal or greater harm to the security of private rights. . . . For premature and relatively abstract decision, which such a policy would be most likely to promote, have their part too in rendering rights uncertain and insecure. *Id.*, at 572."

> The applicability of these rules: can be determined only by an exercise of judgment relative to the particular presentation, though relative also to the policy generally, and to the degree in which the specific factors rendering it applicable are exemplified in the particular case. It is largely a question of enough or not enough, the sort of thing precisionists abhor but constitutional adjudication nevertheless constantly requires. *Id.*, at 574 (emphasis added) *Accord, Poe* v. *Ullman*, 367 U.S. 497, 508-09 (1961). The following examination of the record demonstrates that, given the importance of this case, there is just "not enough."

[11] The rush to judgment in the instant case encompassed both the parties: the case was tried on a paper record tantamount to summary judgment, 18 Cal. 3d at 39; and the California Supreme Court exercised its rarely used power to transfer a cause to it, "prior to a decision by the Court of Appeal, because of the importance of the issues involved". *Id.*

B. The Record.

1. *The Evidence presented by the University.*

The only affirmative proof presented by the University in its defense and in support of its request for a declaratory judgment was one eleven-page declaration by the Chairman of the Admissions Committee, Dr. Lowry (CT. 61-72). Apart from discussion of Mr. Bakke's personal situation, the declaration merely makes a series of conclusionary statements. No other evidence was presented since the University stipulated that the case could be decided on the basis of this declaration and the paper evidence generated by Mr. Bakke.

2. *The Evidence not presented by the University.*[11]

The California Supreme Court's decision turned directly upon: (1) its perceived rule of law that: "[a]bsent a finding of past discrimination—and thus the need for remedial measures to compensate for . . . prior discriminatory practices . . ., the preferential treatment of minorities . . . is invalid on the ground that it deprives a member of the majority of a benefit because of his race", 18 Cal. 3d at 57-58.

[11] The following discussion relates only to some of the University's most glaring evidentiary omissions. Not only is the record barren of facts, but recent discoveries point to at least one rather important misstatement of fact. The record states that in 1974, there were sixteen Task Force Admittees, while recent revelations indicate that in fact there were fifteen. This error is neither harmless nor insignificant since it appears that the sixteenth "slot" was returned to regular admissions for the Task Force felt that there was need for a more qualified admittee. Letter of Dr. S. Gray, App. B, *infra*.) This substantially undercuts the finding of the Court below that the program is "a form of an educational quota system" (18 Cal. 3d at 62) reflecting a "rigid proportionality" (*id.* n. 33).

and, (2) the absence of not only such a finding, but indeed, "no evidence in the record to indicate that the University has discriminated against minority applicants in the past". *Id.*, at 59. Based on a record silent on this crucial point, the California Supreme Court concluded that it "must *presume* that the University has not engaged in past discriminatory conduct". *Id.*, at 60 (emphasis added). Thus, upon this thin reed of presumption, the Task Force program was held invalid. In short, the Court's decision "depends upon unalleged and unknown facts". *Simon* v. *Eastern Kentucky WRO, supra*, 96 S.Ct. at 1927, n. 25.

While we take strong exception to this holding of the California Supreme Court, see, *e.g.*, *Associated Gen. Contractors of Mass.* v. *Altshuler*, 490 F.2d 9 (1st Cir. 1973), *cert. denied*, 416 U.S. 957 (1974); *Contractors Assn. of Eastern Penn.* v. *Secretary of Labor*, 442 F.2d 159 (3rd Cir. 1971), *cert. denied*, 404 U.S. 845 (1971); *cf.*, *Kahn* v. *Shevin*, 416 U.S. 351 (1974), the only prudent position by a university set upon presenting all possible defenses would have been to offer evidence of past discrimination, given the long line of cases supporting affirmative action programs flowing from such a finding.

One obvious evidentiary discrepancy in this record relates to the Medical School Admissions Test (MCAT). The lack of evidence on this point is striking in light of the guidance given by Justice Douglas on this very point in his dissent in *De Funis* v. *Odegaard*, 416 U.S. 312, 327-37 (1974). While the view of one Justice of this Court is not controlling sound trial strategy would warrant that the tactic should be attempted. It was not just a passing thought of Justice Douglas. Nearly all of his 28-page dissent is devoted

to the issue and it concludes with the belief that the matter should be remanded for the taking of evidence on the point. Thus, the point here is not whether or not the MCAT will ultimately be found the be racially biased, but the fact that the record is silent on this important issue.

In dictum, the court below dismissed pleas by amici to follow the course of action urged by Justice Douglas in *De Funis*. The court believed that in spite of the racially disproportionate impact of the MCAT, its use is not unconstitutional, relying on *Washington* v. *Davis*, —— U.S. ——, 96 S.Ct. 2040 (1976). The latter case is inapposite. *Washington* cannot be read to say that a university is barred from compensating for an uncontroverted degree of bias in a test instrument which it, because of circumstances, is forced to rely upon in part. Yet, if the record had been fully developed, such fact could have been shown. Since the University receives federal funds, it is subject to Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (CT. 24, 278) and its implementing regulations, 45 C.F.R. § 80; discriminatory effect, irrespective of discriminatory purpose, would impose an obligation on the University to demonstrate, the validity of the MCAT. *Lau* v. *Nichols*, 414 U.S. 563, 568 (1974)."

"A recent study on the relationship between the MCAT and success in medical school by the Association of American Medical Colleges has found that Blacks who had successfully completed the first two years of medical school had lower MCAT averages than whites who had flunked out. Robert H. Feitz, *The MCAT and Success in Medical School*, Sess. #9.03, Div. of Education Measurement and Research, AAMC (mimeo). *See also*, Simon, et al., *Performance of Medical Students Admitted Via Regular And Admissions—Variance Routes*, 50 J. Med. Ed. 237 (Mar. 1975). Thus, there is evidence available to prove that the MCAT

In addition to the absence of evidence of discrimination against minority applicants on the part of the Medical School itself, the record is devoid of evidence to prove that the State of California, through its educational system, has discriminated against minority students in numerous ways that have deprived them of an equal opportunity to gain admission to medical school. *See, e.g., Jackson* v. *Pasadena City School District*, 59 Cal. 2d 876 (1963) (segregation) *Lau* v. *Nichols*, 414 U.S. 563 (1974) (language), California Assembly, Special Subcomm. On Bilingual-Bicultural Education, "Toward Meaningful And Equal Educational Opportunity: Report of Hearings on Bilingual-Bicultural Education" (July, 1976). Closely related is the absence of any evidence relating to the omnipresent influence of racial discrimination that mars this Nation's history.

Another serious defect in the record relates to the "compelling state interest" test and its "less onerous

alternative" counterweight. The University has harsh criticism for the California Supreme Court's " 'clearly fanciful speculation' " regarding the efficacy of its self-hypothesized alternatives (Pet., 19, 16-17). The criticism is deserved but more deserved is criticism of the total absence of any evidence on these critically determinative points. For example, the University sought, in part, to establish as a compelling state interest the greater rapport that, minority doctors would have with minority patients and the fact that an increase in the number of minority doctors may help to meet the crisis now existing in a minority community seriously lacking adequate medical case. 18 Cal. 3rd at 53. But, "the record contains no evidence to justify" this proposition. *Id.* Of course, it is easier for a court to dismiss an assertion which is unsupported by the "flesh" of an evidentiary basis.

Another example of the paucity of the record is the fact that "the only evidence in the present record on" the unavailability of alternative means "is the admission committee chairman's statement that, 'in the judgment of the faculty of the Davis Medical School, *the special admissions program is the only method* whereby the school can produce a diverse student body . . .' " 18 Cal. 3rd at 89 (Tobriner, J., dissenting) (emphasis in original). This was an issue deserving extensive evidentiary development.

CONCLUSION

The importance of the substantive issues in this case extends far beyond the parties because of the role of the basic policy at issue in overcoming the historical consequences of exclusion. The interests of the "majority" are inextricably bound to, and congruent with, the interests of the "minorities" because of this nation's indefectable movement to racial harmony and peace,

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measures Blacks as "less qualified" than some whites, when they are in fact "better qualified".

This evidence, never before the trial court or California Supreme Court, puts into serious doubt the very question at issue before it: whether the Special Admissions Program at U.C. Davis Medical School "offends the constitutional rights of *better qualified applicants* denied admission . . . ." 18 Cal. 3d at 38, (emphasis added).

In addition, there is substantial reason to doubt the predictive value of the MCAT as applied to all applicants. "The highest correlation recorded for MCAT scores with medical school grades at Harvard was 0.22, and an average correlation of 0.15 [at other schools] supports the conclusion that the MCAT is unable to discriminate meaningfully among . . . pre-medical students". Whittico, *The President's Column: The Medical School Dilemma*, 61 J. Nat'l Med. A 174, 185 (March, 1969). Similarly, correlations of combined LSAT (Law School Admissions Test) and undergraduate grade point averages, among ninety-nine law schools studied, runs from 0.2 to 0.7, with the median being 0.43. Educational Testing Service, *Law School Validity Study Service*, 21 (1973).

development would be ill-served by addressing the merits in light of the crucial Article III defect and a record so wanting in the necessary elements for the exercise of this Court's plenary power.

Respectfully submitted,

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BLACK AMERICAN
LAW STUDENT ASSOCIATION

APPENDIX

APPENDIX A

July 18, 1973

Mr. Allan P. Bakke
1083 Lily Avenue
Sunnyvale, California 94086

Dear Allan:

Thank you for your thoughtful letter of July 1. I must apologize for not answering your original communication of May 30 sooner, it arrived amidst the preparations for our second commencement, the start of the summer quarter for continuing students, and a complicated array of management changes within the medical school's administration.

Your first letter involves us both in a situation that is perhaps as painful for us as for you. You did indeed fare well with our Admissions Committee and were rated in its deliberations among the top ten percent of our 2,500 applicants in the 1972-73 season. We can admit but one hundred students, however, and thus are faced with the distressing task of turning aside the applications of some remarkably able and well-qualified individuals, including, this year, yourself. We do select a small group of alternative candidates and name individuals from that group to positions in the class made vacant by withdrawals, if any. The regulations of the University of California do not permit us to enroll students in the medical school on any other basis than full-time, however, so that even your suggestions for adjacent enrollment cannot be enacted.

Your dilemma—our dilemma, really—seems in your mind to center on your present age and the possible detrimental influence this factor may have in our consideration of your application. I can only say that older applicants have successfully entered and worked in our curriculum and that your very considerable talents can and will override any questions of age in our final determinations.

I think the real issue is what to do now. I have two suggestions, one related to your own candidacy here, the other addressed to the matters raised in your second letter. First, I would like you to apply a second time to Davis, under the Early Decision Plan. We are participating in the AMCAS system this year and to apply as an EDP candidate you need only so indicate on the appropriate AMCAS form and agree to apply only to Davis until a decision is reached, no later than October first. The advantages are early and thorough evaluation and interview with a correspondingly prompt decision either to offer you a place or to defer your application for later consideration as a regular applicant. In the event that our decision is the latter, you might consider taking my other suggestion which is then to pursue your research into admissions policies based on quota-oriented minority recruiting. The reason that I suggest this coordination of activities is that if our decision is to deter your application for admission, you may then ask AMCAS to send it elsewhere as well. Your interest in admission thus would become more generalized and your investigation more pointed.

I am enclosing a page that describes the basic approach used by the medical school at Davis in evaluating applicants who have "minority" status. I don't know whether you would consider our procedure to have the overtones of a quota or not, certainly its design has been to avoid any such designation, but the fact remains that most applicants to such a program are members of ethnic minority groups. It might be of interest to you to review carefully the current suit against the University of Washington School of Law by a man who is now a second year student there but who was originally rejected and brought suit on the very grounds you outlined in your letter. While the case is on appeal to the U.S. Supreme Court at this time, the immediate practical result two years ago was a lower court-

E-45

ordered admission for the plaintiff. The case, De Funis vs. Odegaard, can be researched in a law library at your convenience: a summary is enclosed. I might further urge that you correspond with Prof. Robert Joling, a member of the faculty at the University of Arizona College of Medicine interested in medical jurisprudence. An attorney, Joling can give you perhaps the best indication of the current legal thinking on these matters as they pertain to medical schools. Associate Dean Martin S. Begun of the New York University School of Medicine can also assist in your research.

I hope that these thoughts will be helpful, and that you will consider your next actions soon. I am enclosing an application request card for your use, should you decide to make a second shot at Davis.

Sincerely,

PETER C. STORANDT
Assistant to the Dean
Student Affairs/Admissions

Sunnyvale, California 94086
1088 Lily Avenue
August 7, 1973

Peter C. Storandt
Office of Student Affairs
University of California, Davis
Davis, California 95616

Dear Mr. Storandt:

Thank you for taking time to meet with me last Friday afternoon. Our discussion was very helpful to me in considering possible courses of action. I appreciate your professional interest in the question of the moral and legal propriety of quotas and preferential admissions policies; even more impressive to me was your real concern about the effect of admission policies on each individual applicant.

You already know, from our meeting and previous correspondence, that my first concern is to be allowed to study medicine, and that challenging the concept of racial quotas is secondary. Although medical school admission is important to me personally, clarification and resolution of the quota issue is unquestionably a more significant goal because of its direct impact on all applicants.

The plan of action I select should be designed to accomplish two purposes—to secure admission for me and to help answer the legal questions about admissions practices which show racial preference.

Two action sequences which appear to have some prospect of satisfying both requirements are outlined below.

Plan A

1. Apply to Davis under the Early Decision Program.

2. If admitted, I would retain standing to sue Stanford and UCSF in order to officially pose the legal questions involved. With my admission assured, I could proceed directly to a filing of pleadings, bypassing the possible compromise of admitting me to avoid the inconveniences of legal proceedings. Hopefully, I would be able to obtain legal or financial assistance to sustain these proceedings.

Plan B

1. Apply to Davis under the Early Decision Program.
2. Confront Stanford in August or September, 1973, attempting to secure immediate admission as an alternative to a legal challenge of their admitted racial quota.
3. If admitted to Stanford, then sue Davis and UCSF. If also admitted to Davis, sue only UCSF.

Stanford is chosen for this confrontation because of their greater apparent vulnerability. Stanford states categorically that they have set aside 12 places in their entering class for racial minorities.

Two principles I wish to satisfy in choosing my course are these:

1. Do nothing to jeopardize my chances for admission to Davis under the E.D.P.
2. Avoid actions which you, Mr. Storandt, personally or professionally oppose. My reason for this is that you have been so responsive, concerned, and helpful to me.

Plan B has one potential advantage over plan A. It contains the possibility, probably remote, of my entering medical school this fall, saving a full year over any other ad-

missions possibilities. Because my veterans' educational benefits eligibility expires in September, 1976, admission this year would also be a great financial help.

Mr. Storandt, do you have any comments on these possible actions? Are there any different procedures you would suggest? Would Davis prefer not to be involved in any legal action I might undertake, or would such involvement be welcomed as a means of clarifying the legal questions involved?

Although they may not be relevant to the legality of preferential minority admissions, I would like to learn the answers to several questions. They relate to how well those selected under "minority" admissions programs perform.

1. Do they require special tutoring?
2. Do they take longer to complete medical school and therefore use more resources?
3. Do they perform adequately on national evaluation examinations?

Are statistics like these available as public records, and if so, where can one obtain them?

If it is more convenient to phone than to write, should you have any comments or answers for me, you may reach me any day after 4:30 P.M. at my home (408) 246-3356. I will be happy to accept charges for any such call.

Again, thank you for the considerable time and effort you have spent listening to my inquiries, informing, and advising me. If you are in the Sunnyvale area and would like to visit us, Judy and I would be happy to have you.

Sincerely yours,

/s/ Allan P. Bakke
Allan P. Bakke

E-47

August 15, 1973

Mr. Allan P. Bakke
1088 Lily Avenue
Sunnyvale, California 94086

Dear Allan:

Thank you for your good letter. It seems to me that you have carefully arranged your thinking about this matter and that the eventual result of your next actions will be of significance to many present and future medical school applicants.

I am unclear about the basis for a suit under your Plan A. Without the thrust of a current application for admission at Stanford, I wonder on what basis you could develop a case as plaintiff; if successful, what would the practical result of your suit amount to? With this reservation in mind, in addition to my sympathy with the financial exigencies you cite, I prefer your Plan B, with the proviso that you press the suit—even if admitted—at the institution of your choice. And there Stanford appears to have a challengeable pronouncement. If you are simultaneously admitted at Davis under EDP, you would have the security of starting here in twelve more months.

Your questions about the actual academic performance of those admitted under "minority" admissions programs have been asked frequently, as you might imagine, and have received attention in many circles, I would suggest research searching these issues in the *Journal of Medical Education* where an extensive bibliography has accumulated in the last few years. At Davis, such students have not required "official" tutoring, although they and many of their classmates have organized an impressive series of study sessions during the year. A few of them—perhaps ten percent—have taken longer than four years to complete the M.D. degree (but not more than one year longer). Their performance on the first part of the National Board of Me

ical Examiners' test series has been mixed—half of the current third year class "minority" students failed to qualify as passing the first time they took the examination; all of our "minority" students have passed the appropriate levels of the test by the time of their graduation. Part two, based on the clinical years of a medical education, seems to pose no such problems for these students.

I am sure that you can recognize the need for careful evaluation of these facts and opinions. I will be interested to learn of your view of them, particularly after you have been able to read some studies done on a national and regional basis. Is there a medical library reasonably close to you that you could use in working up your research on this subject?

With best wishes,

Sincerely,

PETER C. STORANDT
Assistant to the Dean
Student Affairs/Admissions

E-48

APPENDIX B

UNIVERSITY OF CALIFORNIA, DAVIS

DIVISION OF THE SCIENCES
BASIC TO MEDICINE
DEPARTMENT OF HUMAN PHYSIOLOGY

SCHOOL OF MEDICINE
DAVIS, CALIFORNIA 95616

January 4, 1977

Editor
The Sacramento Bee
21st and Q Streets
Sacramento, CA 95813

Dear Sir:

The article entitled, "U.C. Davis Suit Has National Impact", by N.Y. Times News Service writer Gene I. Maeroff (Sacramento Bee, Jan. 2, 1977) contains a number of inaccuracies and misconceptions which have repeatedly appeared in news accounts of the special admissions program at UCD Medical School, as well as in the public record of the Bakke case. One of the most flagrant misstatements of fact which has recurred is that UCD has had a strict quota of 16% of the places reserved for minority students out of the 100 available in each freshman class. The special admissions program as it was originally authorized by the medical school faculty in 1970, set 16% as a goal toward which the admissions committee was to work in admitting disadvantaged students. The difference between a goal and a quota may seem to be a minor academic point to the public, but it most assuredly is not an insignificant one. It is actually one of the crucial points on which the judicial decision in the Bakke case was based. Not only was it the intent of the faculty that 16% be a goal, but in practice the admissions committee has viewed it as a goal, since two of the freshmen classes, one of which was the class for which

Bakke sought admission, enrolled only 15 students by way of the special program.

Another misconception is that the program was specifically set up in order to admit racial minorities. In the 1970 faculty authorization for the program, no mention was made of ethnic or racial identity as being a factor in the selection process for special admittees. It was specifically stated that highly motivated and promising students with backgrounds of educational deprivation were to be considered under a new program which was to be called, Task Force on Medical Education for Underprivileged Citizens, and it was implied that the social-economic factors which were primarily responsible for the educational deprivation were to be looked at carefully in selecting the students. Although most of the students who subsequently enrolled via the program have been from racial minorities, white students have not been arbitrarily excluded from the program, as has been implied repeatedly. On the contrary, quite a few of them have been interviewed for special admission. The national AMCAS application form which is used by UC Davis as well as a majority of the U.S. medical schools (the student files one form and has copies of it sent to all of the medical schools to which he would like to apply), asks the applicant whether he wishes consideration for admission under a minority program. Schools which have no such program ignore the answer to that question, others use the data in their selection process to suit their own programs. The question is worded in that way because many schools actually do have programs which are set up specifically to recruit minorities. It is ironic that UC Davis was singled out as having a racial quota system, when in actuality it is one of the few schools which set up its program on a non-racial, non-quota basis. In spite of the wording of the question regarding minority consideration on the application form, many white students do ask for special consideration in the minority category. At Davis

an admissions subcommittee screens all applicants who ask for special consideration (both whites and racial minorities) and gives strongest consideration to those who appear, from other personal data in the application, to be disadvantaged. The medical school bulletin which is available to all applicants, states specifically that religious preference, sex and race of the applicant are not considered in the evaluation process, and it describes the special program as being one based on socio-economic/educational disadvantage. Although grades, test scores and disadvantage factors are used in the initial screening of these applicants the students who are finally selected for admission are chosen because they present the strongest evidence of a serious desire to eventually return to a disadvantaged area similar to that from which they came (mainly inner city ghetto, rural area, or Indian reservation) to provide health care, since those are the geographical areas in which medical needs are not being served adequately by the medical profession. With those criteria, it is not surprising that most of the students who have entered the program have come from racial minorities, since those are the ones who predominantly inhabit California's disadvantaged areas and they are the ones who have a paramount interest in the living conditions there. The program can be viewed somewhat as a 'bootstrap operation' in which those directly involved are given the opportunity to better their own health conditions.

The final point which needs clarification is that medical school admission is never decided strictly on the basis of grades and aptitude test scores. Bakke has charged 'reverse discrimination' because minority students with lower academic averages than his were preferentially admitted by way of a special program. However, Davis, as well as most other medical schools, accepts students through the regular admission process who have B+ averages, in preference to some A students, because they appear to have

superior personal qualities. Thus, grades have been the sole concern of admissions committees in selecting students (otherwise a computer could be used to select the class), and Bakke is not necessarily more qualified for the study of medicine (or the eventual practice of medicine) merely because he has higher undergraduate grades than some other students. Maeroff quotes President Bok of Harvard University on the dangers of having court judges impose rigid admissions criteria for schools, since they don't have 'first-hand experience with the nuances and subtleties of the admissions process'. It is precisely those nuances and subtleties which are the important human factors to be considered in selecting future physicians. It would be disadvantageous to have them rigidly standardized by a court because admissions committees need some judgmental latitude in selecting a balanced class of students with varied personalities, backgrounds, career goals and interests. Hopefully, continuation of such admissions policies will allow for the education of physicians who are attuned to the health needs of all levels of society.

Respectfully,

/s/ Sarah D. Gray, Ph.D.
Sarah D. Gray, Ph.D.
Member of Admissions Committee
Past Task Force Chairman
Assoc. Prof. of Human Physiology
School of Medicine
University of California
Davis, CA 95616

Item #3

Reply to Brief of Amici Curiae in Opposition to Certiorari

in the Supreme Court of the United States,

October Term 1976;

The Regents of the University of California v. Allan Bakke

No. 76-811

The Regents of the University of California,
Petitioner,

vs.

Allan Bakke,
Respondent.

REPLY TO BRIEF OF AMICI CURIAE IN OPPOSITION TO CERTIORARI

Petitioner, the Regents of the University of California (the "University"), files this reply brief in response to the Brief of Amici Curiae ("Amici"). Announcing their support for the University on the merits, Amici nonetheless oppose review of the decision of the California Supreme Court outlawing minority special admissions programs for professional schools. In an effort to forestall this Court's consideration of a crucial constitutional issue, Amici challenge standing and the adequacy of the record on assorted grounds. Quite apart from the tenor of their expression, the arguments are without merit.

The larger part of Amici's brief is devoted to an argument that the petition should be denied for lack of standing.[1] Amici assert that to have standing Bakke must have been certain of admission in the absence of the challenged

1. At one point in their brief, Amici contend that the appropriate disposition of the case is to vacate and remand for the taking of further evidence. Amici Brief 19. Amici's standing argument cannot be reconciled with this suggested disposition or

program. They further contend that the record establishes incontrovertibly that Bakke would not have been admitted had there been no special admissions program. Proceeding from these hypotheses, Amici accuse the University of giving up an "air tight case" on standing when it stipulated that it could not sustain the burden of proving that Bakke would not have been admitted, and of engaging in a "verbal game" to confer jurisdiction on this Court. Amici Brief 16, 19. Amici are wrong on the law, wrong on the facts, and wrongly impugn the University's motives.

The short answer to Amici's first point is that the law does not require certainty of admission in order to establish standing. For example, this Court assumed jurisdiction in *DeFunis v. Odegaard*, 414 U.S. 1038 (1973), in the face of an explicit statement by the Washington Supreme Court that "There is no way of knowing that plaintiff would have been admitted to the law school, even had no minority student been admitted." 507 P.2d 1169, 1177 (1973). This acknowledgment of standing in *DeFunis* is fully consistent with established standing doctrine. *E.g.*, *Taylor v. Louisiana*, 419 U.S. 522 (1975); *Peters v. Kiff*, 407 U.S. 493 (1972); *Carter v. Jury Commission*, 396 U.S. 320 (1970); *Tumey v. Ohio*, 273 U.S. 510 (1927); *Strauder v. West Virginia*, 100 U.S. 303 (1880).

The short answer to Amici's second point—the purported certainty of Bakke's nonadmission—is that it is simply not so. Amici contend that it is possible to establish with

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with their professed endorsement of the University's position on the merits. To find a lack of standing is to leave prevailing the lower court decision overturning special admissions programs. For as language of this Court, quoted elsewhere by Amici, explicitly points out, California courts are not bound by federal justiciability doctrines. Amici Brief 16 n. 9, quoting *Richardson v. Ramirez*, 418 U.S. 24, 36 (1974). Amici apparently are also willing to run the risk that the California Supreme Court opinion, left intact, will exert no influence on other courts, an assumption hardly consonant with common sense—or with the preservation of special

mathematical certainty that Bakke would never have bee
admitted even if Davis Medical School had no Task Forc
program. This argument cannot survive analysis in th
context of the full record, rather than on the basis of selecte
facts. For example, at one point in their brief, Amici de
clare that it "is certain that at least 16 persons had priorit
over Mr. Bakke in 1973 . . .", and thus it is clear he woul
not have been admitted. Amici Brief 12. This ignores im
portant facts, including the obvious one that some offe
of admission are declined and thus, even assuming 1
persons had priority over Bakke in 1973, it is by no mean
clear that Bakke would not have been admitted if an addi
tional 16 places had been available. Moreover, the notio
of inflexible "priority" is itself inaccurate, for benchmar
ratings were not wholly determinative of admission a
Davis.

At the risk of some repetition of points made in the Un
versity's petition, an objective view of the full record lead
to one conclusion only—Bakke came so close to admissio
that it cannot be demonstrated one way or another whethe
he would have been admitted absent the special progra
The conclusion that flows ineluctably from an objective vie
of the entire record is reflected in the trial court's statemen
that, although Bakke had failed to sustain the burden o
the issue, nevertheless ". . . there appears to the court
be at least a possibility that [Bakke] might have been a
mitted absent the 16 favored positions on behalf of mino
ties." CT 308.[2]

As pointed out in the petition, Bakke's admission t
non comes down to where the burden of proof on th

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2. "CT" references are to the clerk's transcript filed in t
California Supreme Court. See also Pet. App. D, pp. 107a-10
At p. 14 n. 7 of their brief, Amici attempt to make light o
report by the medical school to H.E.W. in response to an inqu
from that Department prompted by Bakke's complaint to H.E.

question is allocated. Only when the highest state court unequivocally ruled against the University on the burden of proof issue did the University stipulate what is obviously the reality on the "true facts" (to borrow Amici's language at p. 18 of their brief)—that the burden could not be sustained.

Thus, the short answer to Amici's impugning of the University's motives in stipulating its inability to carry the burden of proof is that there is little point in magnifying nonsense. The University vigorously argued in both courts below that Bakke properly bore the burden on his likelihood of admission and that Bakke could not meet the burden despite his proximity to admission. There is nothing inconsistent, much less unseemly, about sparing the parties and the trial court the pointless proceeding that would ensue if the University, under the mandate of the California Supreme Court, went through the motions of trying to carry an impossible burden. The stipulation concedes only that the burden cannot be met, not that it was properly imposed.

Finally with regard to standing, Amici ignore the inescapable fact that the judgment below would compel the

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that he had been denied admission as a result of the existence of the Task Force program. The most direct response is simply to quote in full the key passage of the report, which, following a recitation of Bakke's high rating, reads:

> "Thus, Mr. Bakke was found by the Admissions Committee to be a highly desirable candidate and came very close to being offered a place in the entering class for the fall of 1973. The single reason for his non-acceptance was the lack of available space in that group; had additional places been available, individuals with Mr. Bakke's rating would likely have been admitted to the medical school as well. As the chairman of the Admissions Committee noted in his letter to Mr. Bakke informing him of the reluctant decision not to accept him, 'it is indeed a very sad situation that we must refuse admission to a large number of well-qualified and well-motivated young men and women.' The University deeply regrets that it cannot accommodate all who, like Mr. Bakke, have the appropriate qualifications for a career in medicine [illegible] presently available."

243

3-13

admission of an applicant that the University actively resisted and continues to resist admitting. They further ignore that Bakke has attacked[3] an admission program that the University has vigorously defended and believes to be an essential and lawful means for alleviating the corrosive effects of an all too lengthy history of societal discrimination. A more concrete adverseness, both in technical terms and in spirit, is difficult to imagine.

The remainder of the Amici Brief is devoted to a collection of contentions that the record is inadequate to support review in this Court of an issue of such fundamental importance. Amici do not dispute the facts set forth in the petition.[4] Nor do they dispute that the issue of the constitutionality of special admissions programs is framed by those facts.[5] Rather their argument reflects their conception of the trial strategy that is purportedly necessary to make the case an appropriate vehicle to permit this Court to address the issue.

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3. At p. 16, n. 10 of their brief, and in eight related pages of appendix, Amici hint that the University invited the suit. They base this notion on the letters of an individual, no longer with the University, who was an assistant to the dean (not the Dean or an Assistant Dean) of the medical school. Amici's reluctance to give this thought treatment in text is understandable, for they have omitted the immediately prior letter in the chain of correspondence to which they advert. That letter was sent by Bakke. In it he raised the prospect of the instant suit. CT 259.

4. Amici do dispute one fact in the record—that there were 1 Task Force admittees in 1974. Amici point out at p. 23 n.12 of their brief that in that year there were only 15 Task Force admittees. The University acknowledges this to be a fact. In 1974 one Task Force admittee withdrew before the start of classes. Admission was then granted to a nonminority applicant from the regular admissions process. The University further acknowledges that the fact evidences, as the University has maintained throughout the proceeding, that the Task Force program had a goal, not a quota of filling 16 places per year. The reduction of Task Force admittees in 1974 from 16 to 15 occurred after the close of discovery in the case and did not become known to counsel until recently.

5. Amici mischaracterize the record as consisting of an eleven page declaration and "paper evidence generated by Mr. Bakke

The absence of merit in Amici's assertions about the adequacy of the record is illustrated by brief reflection on some of the items they find to be missing. It would, for example, be pointless to attempt to develop a trial record on some of the issues, such as societal discrimination and instances of *de jure* segregation in state public schools, to which Amici advert. This country's unfortunate history of racial and ethnic discrimination is such common knowledge that it scarcely requires application of the doctrine of judicial notice. Moreover, that history, as well as the existence of unlawful *de jure* segregation in California public schools, is formally recognized in numerous opinions and holdings of state and federal courts, some of which are cited by Amici. Surely Amici do not suggest that the absence of a trial record on these two incontrovertible points will preclude this Court or the University from relying on them to support the constitutionality of the challenged program.

E-54

While there may be some point in arguing intentional discrimination where it has existed, in this case it is simply not possible. There has been no intentional discrimination by the Davis Medical School. The school opened only eight years ago, and very soon thereafter began to fashion the Task Force program. If Amici are arguing that discriminatory effect alone is sufficient to establish unlawful discrimination, it need only be noted that the record is complete on the racial and ethnic composition of the entering classes at Davis from 1968 to the years at issue in this case. The record reflects, as pointed out in the petition, that in 1968,

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Amici Brief 23. This ignores substantial portions of the record, including the deposition of the Chairman of the Admissions Committee and Associate Dean and extensive statistical data of the medical school, portions of which appear in the petition and the brief in opposition. The salient point is that there is and was no dispute with regard to the determinative facts. In such a situation, there is surely no virtue in undertaking a lengthy and costly proceeding to generate an unnecessary mass of record.

245

before implementation of the Task Force program, the entering class at Davis contained almost no minority students. To the extent that Amici's point sweeps in the University as a whole, they are taking for granted as an assumption the remarkable hypothesis that a university that has been a frontrunner in voluntary efforts to counter the effects of discrimination has engaged in intentional racial and ethnic discrimination. Above all, the University rejects the incongruous notion that the only professional schools permitted to undertake special admissions programs are those with a history of deliberate racial discrimination.

Amici also argue that the record is deficient to support review because of paucity of evidence on the inefficacy of purported alternatives to the Task Force program.[6] This position is equally unsound. The University's position throughout this litigation has been and is that it is a constitutionally valid objective for the medical school to seek to increase racial and ethnic diversity in the school and in the medical profession. The California Supreme Court accepted arguendo the validity of these objectives but held, in an unprecedented decision, that the school could not pursue them by race conscious means so long as the court could conceive of any other methods by which they

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6. This contention ignores the fact that the school's adoption of the special admissions program is an implicit determination that it is a better means than any other. In addition, as Amici recognize, the record contains the uncontradicted testimony of the Chairman of the Admissions Committee and Associate Dean that "in the judgment of the faculty of the Davis Medical School, the special admissions program is the only method whereby the school can produce a diverse student body. . . . [T]here would be few, if any, black students and few Mexican-American, Indian or Orientals from disadvantaged backgrounds in the Davis Medical School or any other medical school, if the special admissions program and similar programs at other schools did not exist. . . ." CT 67-68.

might possibly be advanced. This is one of the features of the decision below which most urgently calls for this Court's review. Its influence will disturb litigation of this kind until this Court resolves the matter. If, as the University believes, the California court's position is incorrect, this Court can prevent great injustice, as well as much anxiety and wasted effort, by saying so now. If, on the other hand, the court below is affirmed, the higher education community, litigants, and the lower courts will at least be able to take informed action. The pertinent question at this stage in the development of the law is the appropriate standard, not whether the University could meet the standard devised by the California court. The latter issue, and the University's ability to meet it in this case and in the future, properly can be reached only following the unlikely event of this Court's adoption of the precise rationale of the court below.

E-55

Amici's suggestion that there should be "extensive evidentiary development" of the lack of feasibility of alternatives, Amici Brief 27, implicitly concedes the correctness of the California court's novel rationale. Moreover, to attempt to anticipate and establish the inefficacy of any alternative means which an appellate court might later imagine is clearly a futile enterprise—both in theory and in fact the impossible task of proving a universal negative. Most fundamentally, it is to accept the illusion that it might be possible to achieve racially oriented results without utilizing racially oriented means. Surely by now this is untenable. *Cf. Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 16 (1970). Even the author of the opinion below, when Attorney General of California over a dozen years ago, said in the context of race conscious efforts to promote school integration that to hold

247

to the assumption that schools must be officially color-blind "would be to conclude not merely that the Constitution is color-blind, but that it is totally blind."[7]

The University believes it and the nation deserve a decision on the merits in this case. It does not believe that California, first among all the states, should be condemned to return to virtually all-white professional schools. The University does not share the Amici's evident apprehension that the Court that authored *Brown v. Board of Education* will be insensitive to what is truly required to carry out this Court's commitment to real equality of opportunity for all citizens.

Respectfully submitted,

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7. 42 Ops. Att. Gen. Calif. 33, 35 (1963).

Item #4

The Bakke Decision and the California State University and Colleges:

Memo from David Kagan, State University Dean, Student Affairs

THE CALIFORNIA STATE UNIVERSITY AND COLLEGES
Office of the Chancellor
400 Golden Shore
Long Beach, California 90802
(213) 590-5545

Code: SA 77-02

ate: January 7, 1977

o: Deans of Students

rom: David Kagan
State University Dean
Student Affairs

ubject: The Bakke Decision and The California State University and Colleges

As you know, on September 16, 1976, the California Supreme Court ruled that the UC Davis medical school violated the 14th Amendment rights of Mr. Allan Bakke, as well as other non-minority applicants, because he was denied admission due to preferential treatment based on race. Although CSUC General Counsel will soon issue a detailed analysis of the Bakke decision, it is important to know based on the information now available, that the decision is not expected to affect existing CSUC policies of such programs as Admissions, EOP and Financial Aid.

The Bakke decision took issue with the use of race as an admission criterion and to the establishment of admission quotas for minority students. The CSUC has not established such quotas and has based special admission on being economically disadvantaged rather than being a member of a racial minority. Therefore, we anticipate that it will not be necessary to alter current policies.

----------MORE----------

ATTENTION: DEANS/DIRECTORS OF ADMISSION AND RECORDS
DIRECTORS OF EDUCATIONAL OPPORTUNITY PROGRAMS
RELATIONS WITH SCHOOLS OFFICERS
DIRECTORS OF FINANCIAL AID

Copies to: Presidents
Vice Presidents for Academic Affairs
Vice Presidents for Administration
Deans of Graduate Studies
Public Information Officers
Chancellor's Office Staff
Administration Information Center

We are particularly concerned that potential CSUC students from disadvantaged/minority backgrounds not be discouraged from applying to the CSUC as a result of misunderstanding the impact of the Bakke decision. We are including the substance of this memorandum in the next Counselor's Digest and recommend that EOP and Relations with Schools offices, in particular, disseminate appropriate information through their normal communication channels in an effort to assure potential students that the Bakke decision will not affect CSUC admission policies.

It would be tragic if any student were to become discouraged and turn away from higher education because of uncertainty or pessimism brought on by misinterpretations and extrapolations of the Bakke decision.

Please feel free to communicate with Mr. Mayer Chapman, General Counsel, or this office if you have any questions.

DK:lf

The Bakke Decision and the University of California:

Memo from David S. Saxon, President, University of California

Office of the President

BERKELEY, CALIFORNIA 94720

April 13, 1977

INTERNAL CORRESPONDENCE

CHANCELLORS

Dear Colleagues:

In response to concerns expressed at the March meeting of the Board of Regents, I am writing to reiterate that, regardless of the outcome, the Bakke case does not affect our regular undergraduate admissions process, because the University's requirements for regular undergraduate admissions contain no race conscious aspects. Will you please inform your admissions and recruitment staffs of this fact. We must avoid as much as possible misunderstanding and confusion about this important matter.

I must add, however, that the potential impact of the Bakke case on special undergraduate admissions programs is still uncertain. If admission decisions in such programs are based on racial considerations, these programs may be affected. Please note that, in any event, no change whatsoever is required before the case is finally settled. Will you please also inform your staffs of this aspect.

I am sending a copy of this letter to The Regents for their information.

Sincerely,

David S. Saxon

David S. Saxon
President

cc: General Counsel Reidhaar
Vice President McCorkle
Vice President Swain
Assistant President Everett
Special Assistant to the President Brugger

APPENDIX F
Planning for Equal Educational Opportunity

Item

1 Assembly Concurrent Resolution 151 . . . . . F-1

2 Student Affirmative Action Plan Outline F-3

Item #1

Assembly Concurrent Resolution 151

Assembly Concurrent Resolution No. 151

RESOLUTION CHAPTER 209

Assembly Concurrent Resolution No. 151—Relative to public higher education.

[Filed with Secretary of State September 11, 1974.]

LEGISLATIVE COUNSEL'S DIGEST

ACR 151, Joint Committee on the Master Plan for Higher Education (Assemblyman Vasconcellos, Chairman). Public higher education.

Requests governing authorities of various institutions of public higher education to prepare a plan providing for addressing and overcoming, by 1980, ethnic, sexual, and economic underrepresentation in the makeup of the student bodies of institutions of public higher education, and to submit such plan to the California Postsecondary Education Commission by July 1, 1975, and request similar reports annually thereafter.

Directs California Postsecondary Education Commission to integrate and transmit such plans to the Legislature by first legislative day of 1976, and directs similar reports annually thereafter.

WHEREAS, The Legislature recognizes that certain groups, as characterized by sex, ethnic, or economic background, are underrepresented in our institutions of public higher education as compared to the proportion of these groups among recent California high school graduates; and

WHEREAS, It is the intent of the Legislature that such underrepresentation be addressed and overcome by 1980; and

WHEREAS, It is the intent of the Legislature that this underrepresentation be eliminated by providing additional student spaces rather than by rejecting any qualified student; and

WHEREAS, It is the intent of the Legislature to commit the resources to implement this policy; and

WHEREAS, It is the intent of the Legislature that institutions of public higher education shall consider the following methods for fulfilling this policy:

(a) Affirmative efforts to search out and contact qualified students.

(b) Experimentation to discover alternate means of evaluating student potential.

(c) Augmented student financial assistance programs.

(d) Improved counseling for disadvantaged students;

now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Regents of the University of California,

4 151 30 35

the Trustees of the California State University and Colleges, and the Board of Governors of the California Community Colleges are hereby requested to prepare a plan that will provide for addressing and overcoming, by 1980, ethnic, economic, and sexual underrepresentation in the makeup of the student bodies of institutions of public higher education as compared to the general ethnic, economic, and sexual composition of recent California high school graduates, and to submit such plan to the California Postsecondary Education Commission on or before July 1, 1975. The California Postsecondary Education Commission shall integrate and transmit the plans to the Legislature with its comments by the first legislative day of 1976. The regents, the trustees, and the board of governors shall annually report to the California Postsecondary Education Commission, on or before July 1 of each year, which shall integrate and transmit the reports to the Legislature by December 31 of each year with evaluations and recommendations, on their progress, including specification as to what obstacles stand in the way of implementation of the plan; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the Regents of the University of California, the Trustees of the California State University and Colleges, the Board of Governors of the California Community Colleges, and the California Postsecondary Education Commission.

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Item #2

Student Affirmative Action Plan Outline

Student Affirmative Action Plan Outline

The Legislature, through Assembly Concurrent Resolution 151, has requested the Regents of the University of California, the Trustees of the California State University and Colleges, and the Governors of the California Community Colleges "to prepare a plan that will provide for addressing and overcoming ethnic, economic, and sexual underrepresentation in the make-up of the student bodies of institutions of public higher education..." In recognition of the need for cooperative approaches to make significant further progress in this area, it is recommended that each segment utilize a common format in developing its particular student affirmative action plan.

I. Preamble Statement

A clear discussion of the nature of the problem of underrepresentation, as well as a statement of planning goals and timetable for seeking to achieve those goals.

II. Access

Programs and policies designed to ensure awareness of opportunities and to overcome obstacles and potential obstacles which may impede access of target groups.

A. Outreach Programs

1. Inventory of all present outreach programs.

   This inventory should include, as a minimum, the following information about each program: purposes, clientele (target population, number of participants, criteria for selection), services provided, financing (annual cost, major source of funds, distribution of funds, cost to student).

2. Based upon inventory and evaluation findings, develop plan and schedule for implementing similar outreach programs on campuses where needed and applicable.

3. In developing these programs, each segment (campus) should consider the following:

   a. Community based advisory committees to work with school staff in expanding contacts with underrepresented student groups.

   b. Efforts to combat the skill deficiencies of prospective students.

c. Involvement of minority/female students and faculty in personal contact with potential sources of students.

d. Provisions for regular communication with high school and community college counselors, church groups, ethnic groups, and women's organizations.

e. Utilization of similar programs offered by private organizations which the segment is aware of and/or which the segment currently utilizes or might utilize in the campus based programs.

4. Describe provisions for periodic review and evaluation of programs, including:

a. Information on the sources and uses of funds spent within each program.

b. A method for staff and student participation appraisal of each program.

c. Information on the administrative structure for each program and its relationship to other elements of the campus (segments).

B. Admissions

1. Describe provisions for periodic review of admissions criteria, policies and procedures and for modification where appropriate.

2. In carrying out these reviews, each segment should consider the following where applicable:

a. G.P.A. entrance requirements.

b. Test scores (including their validity for particular groups).

c. Appropriateness of application filing periods.

d. Patterns of high school course preparation required or recommended for admission.

e. Application trends.

III. Student Support

Programs to maintain a successful educational environment for underrepresented students.

A. Support Service Programs

1. Inventory of all present support service programs.

   This inventory should include, as a minimum, the following information about each program: purpose, clientele (target population, number of participants, criteria for participation), services provided, financing (annual total cost, cost per student served, major source of funds, cost to student).

2. Based upon inventory and evaluation findings, plan and schedule for implementing similar support service programs on campuses where needed and applicable.

3. In developing these programs, each segment (campus) should consider the following:

   a. Initial support service programs for the crucial period between graduation from high school and the end of the first quarter or semester with emphasis on:

      1) Diagnostic tests to assess entering skill levels

      2) Summer skills programs

      3) Financial counseling

   b. Ongoing support services such as:

      1) Tutorial

      2) Basic skills

      3) Peer advising

      4) Professional advising and counseling

      5) Informational services

      6) Professional development programs

      7) Adjutant for students.

4. Describe provisions for periodic review and evaluation of programs including:

   a. Information on the sources and uses of funds spent within each program.

b. Information on the administrative structure for each program and its relationship to other elements of the campus (segment).

c. A method for staff and student participant appraisal of each program.

B. Programs to sensitize staff and faculty to the needs and problems of low-income, ethnic minority, and women students.

1. Inventory of all programs which seek to sensitize administrative and teaching staff to the problems of underrepresented students and/or which seek to promote a more effective academic program for low-income ethnic minority and women students.

2. Based upon inventory and evaluation findings, plan and schedule for implementation of similar institutional/professional involvement programs on campuses where needed.

3. Provision for periodic review and evaluation of these programs including:

a. Information on the sources and uses of funds spent within each program.

b. Information on the administrative structure responsible for each program and its relationship to other elements of the campus (system).

c. A method for staff and student participant appraisal of each program.

C. Financial Aid

Consideration of a means to ease the financial burdens of underrepresented student groups.

1. In considering financial aid policies and procedures, each segment should consider the following:

a. Self-help concept in light of current economic conditions.

b. Appropriateness of parental contribution expectations.

c. Appropriateness of mix of various types of financial aid for particular student groups.

d. Appropriateness of over-award guidelines.

e. Level of student awareness of award process.

f. Appropriateness of standards concerning "self-imposed poverty".

g. Best schedule of issuing aid funds (monthly, by term, etc.)

V. Financing

Tentative budget and cost estimates for all current and proposed activities.